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In the Supreme Court of the United States

October Term, 1984

GENE P. SCOTT, JOYCE A. SCOTT, ARNOLD W. MADSEN, MARY G. MADSEN, JOHN A. CONNOLLY AND FRANK FITCH, as Trustees of John L. Connolly Trust,

Petitioners.

vs.

THE CITY OF SIOUX CITY, IOWA; METRO-CENTER, INC.; GEORGE COLE; MARGARET PRAHL; WILLIAM GROSS; LOREN CALLENDAR; THOMAS LINDBLOM; DONALD L. LAWRENSON; LARRY CLAUSEN; AND JAN ALBERTSON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I. HAS THE STATE OF IOWA AFFIRMATIVELY EXPRESSED AND CLEARLY ARTICULATED A STATE POLICY TO REQUIRE THE CITY OF SIOUX CITY, IN THE COURSE OF BUILDING A SHOPPING CENTER IN AN URBAN RENEWAL AREA IN CONCERT WITH A PRIVATE DEVELOPMENT COMPANY, TO UTILIZE ITS ZONING POWERS TO PRECLUDE PETITIONERS FROM BUILDING A COMPETING SHOPPING CENTER OUTSIDE THE URBAN RENEWAL AREA?

II. IF THE STATE OF IOWA HAS AFFIRMATIVELY EXPRESSED AND CLEARLY ARTICULATED A STATE POLICY WHICH MANDATES THE CITY OF SIOUX CITY TO UTILIZE ITS ZONING POWERS IN CONCERT WITH A PRIVATE DEVELOPER TO PRECLUDE PETITIONERS FROM BUILDING A COMPETING SHOPPING CENTER OUTSIDE THE URBAN RENEWAL AREA, MUST THE STATE ACTIVELY SUPERVISE THE ANTI-COMPETITIVE ACTIVITIES OF THE CITY OF SIOUX CITY AND OTHERS IN ORDER FOR THE RESPONDENTS TO BE IMMUNE FROM APPLICATION OF THE ANTI-TRUST LAWS?

III. WHERE THE PETITIONERS ARE DEPRIVED OF THE ECONOMIC VALUE OF THEIR LAND FOR USE AS A RETAIL SHOPPING CENTER, BY REASON OF THE ANTI-COMPETITIVE ZONING ACTIVITIES OF THE CITY OF SIOUX CITY DESCRIBED ABOVE, MAY THE CITY INVOKE ANTI-TRUST IMMUNITY TO ESCAPE ITS OBLIGATION TO PAY PETITIONERS THE FAIR VALUE OF THEIR LAND?

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No.

In the Supreme Court of the United States

October Term, 1984

GENE P. SCOTT, JOYCE A. SCOTT, ARNOLD W. MADSEN, MARY G. MADSEN, JOHN A. CONNOLLY AND FRANK FITCH, as Trustees of John L. Connolly Trust,

Petitioners,

vs.

THE CITY OF SIOUX CITY, IOWA; METRO-CENTER, INC.; GEORGE COLE; MARGARET PRAHL; WILLIAM GROSS; LOREN CALLENDAR; THOMAS LINDBLOM; DONALD L. LAWRENSON; LARRY CLAUSEN; AND JAN ALBERTSON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit, Case No. 83-1934 (not officially reported), is set forth in Appendix A to this petition. The opinion of

the United States District Court for the Northern District of Iowa, Western Division, Case No. C79-4009 (not officially reported), is set forth in Appendix B to this petition. An earlier opinion (May 3, 1983) of the United States District Court for the Northern District of Iowa, Western Division, in Case No. C79-4009 (not officially reported), which has a bearing on this case, is set forth in Appendix C to this petition.

JURISDICTION

The judgment and opinion of the United States District Court for the Northern District of Iowa, Western Division, was filed on June 17, 1983. A timely notice of appeal was filed in the United States District Court for the Northern District of Iowa, Western Division, appealing the decision of the district court to the United States Court of Appeals for the Eighth Circuit. The opinion of the United States Court of Appeals for the Eighth Circuit was filed on June 8, 1984. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves: The Fifth and Fourteenth Amendments to the United States Constitution; Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1,2); the Civil Rights Act (42 U.S.C. §1983); and Chapter 414 of the Code of Iowa (1983). The germane portions thereof are set forth in Appendix D to this petition.

STATEMENT OF THE CASE

Proceedings Below

Petitioners are the owners of certain unimproved real property located on the outskirts of Sioux City, Iowa. They filed their original complaint on January 19, 1979 against the City of Sioux City, individual members of the Sioux City Council (the City of Sioux City and the individual members of the Sioux City Council named as defendants are collectively

hereinafter referred to as the "municipal defendants"), and Metro Center, Inc., a private development company. The complaint alleged violations of the Sherman Act, 15 U.S.C. §§ 1 and 2, and was amended December 3, 1981 to allege a violation of the Civil Rights Acts, 42 U.S.C. § 1983. Petitioners allege that, as part of a conspiracy in restraint of trade with the defendant Metro Center, the defendant City, through the exercise of its zoning powers, adopted new zoning ordinances with the purpose and effect of preventing petitioners from proceeding with their planned development of a shopping center which would compete with defendant's proposed downtown shopping center to be constructed in an urban renewal area.

The municipal defendants filed a motion for summary judgment claiming that plaintiffs' property was rezoned to protect against the loss of industrial property within the City of Sioux City. On December 17, 1982, the trial court overruled said motion holding (i) that the actions of the defendants were not protected by the state action immunity doctrine of *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307 (1943), and (ii) that, in view of the Eighth Circuit Court of Appeals' then recent decision in *Westborough Mall v. City of Cape Girardeau*, 698 F.2d 733 (8th Cir. 1982), petitioners' Civil Rights Act claim presented a question of fact for the jury.

Subsequent thereto, the municipal defendants filed a renewed motion for summary judgment, now claiming that their actions were authorized by Iowa's Urban Renewal Law (Appendix D; Chapter 403, Code of Iowa, 1983). On May 3, 1983, the trial court overruled this renewed motion for summary judgment (see Appendix C) holding that the Iowa statute did not meet the clear articulation and affirmative expression of state policy standard of *Community Communications Co., Inc. v. City of Boulder*, 445 U.S. 97, 1025 S.Ct. 835 (1982), the intent to displace competition with regulation or monopoly public service test of *City of LaFayette*

v. Louisiana Power & Light Co., 435 U.S. 389, 98 S.Ct. 1123 (1978), or the active state supervision requirement set forth in *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 S.Ct. 937 (1980).

Shortly after this second denial of their motion for summary judgment, the municipal defendants filed a motion for reconsideration (or, in the alternative, for certification of denial of their motion as involving an important question of law for interlocutory appeal) grounded upon the Eighth Circuit's then recent decision in *Gold Cross Ambulance v. City of Kansas City*, 705 F.2d 1005 (8th Cir. 1983), *cert. applied for 7/25/83*. On June 17, 1983, the trial court, albeit reluctantly, reversed itself and granted the municipal defendants' motion for summary judgment, relying almost entirely upon the Eighth Circuit's *Gold Cross* ruling. Petitioners then appealed to the Eighth Circuit, which on June 8, 1984 affirmed the judgment of the trial court, again relying primarily upon the *Gold Cross* decision. The Court of Appeals held first that the Iowa legislature, in both general and specific provisions of the Iowa Urban Renewal Law, authorized the challenged activities — zoning to protect urban renewal goals and the relationship between the City and Metro Center. Next, the court held that the Iowa legislature contemplated that municipalities might enact the type of ordinances enacted by Sioux City, and the state action immunity doctrine *did not* require the State of Iowa to actively supervise the challenged restraint of trade. Finally, the Court of Appeals held that petitioners were not denied substantive due process, in violation of the Civil Rights Act, because Sioux City's action in rezoning the petitioners' property was designed to accomplish an objective within the government's police power and in furtherance of its urban renewal goals "as explained in the anti-trust section this opinion". (Appendix A, p. 18a)

Details of the Case

Petitioners' real property, acquired in 1962, is located along the southern limits of the City of Sioux City. In 1966

the property was annexed by the City and zoned to permit commercial development, including a regional shopping center and other commercial development. (¶¶ I.C. and I.D., Order for Final Pre-trial Conference) In 1974 the City was attempting to redevelop its downtown through urban renewal. On February 4, 1974, the City entered into a development agreement with defendant Metro Center, Inc., a privately held corporation. (¶ I.B., Order for Final Pre-trial Conference) The president of Metro Center was one Howard Weiner, who had been a member of the Sioux City Council from January of 1973 to November 7, 1973. Mr. Weiner lost in his bid for re-election to the City Council in November of 1973, resigned from the Council on November 7, 1973 and became president of Metro Center on November 20, 1973. (Weiner Dep., p.4, l.23 and p.5, l.2)

On May 6, 1974, the petitioners sold to General Growth Properties, a real estate development company, approximately 19 acres of their property at $10,421.05 per acre for the development of a regional shopping center. The petitioners retained approximately 70 adjoining acres of land for development of a commercial nature around the regional shopping center. The sale of the 19 acres to General Growth included an agreement whereby plaintiffs and General Growth would construct joint roads within their respective properties in order to facilitate the development of all the area. After the purchase, it was publicly announced that General Growth would be developing a regional shopping center on the property purchased from the petitioners. (¶ I.E., Order for Final Pre-Trial Conference; Scott Dep., p.86, ll.3-5)

Subsequently, in June of 1974, members of the City Council had the Sioux City Manager approach the City's Plan & Zoning Commission to request that the Plan & Zoning Commission recommend a change in the City zoning ordinance in a manner which would preclude General Growth

and the plaintiffs from developing, respectively, a regional shopping center and peripheral commercial establishments. The Plan & Zoning Commission rejected this request, voting 10 to 1 against making such a change in the zoning classification. However, Mr. Weiner, president of Metro Center, already had an agreement with the City Council and City Manager, as shown by his confidential memorandum dated July 10, 1974 (Weiner Dep., Ex.7; Clk.Rec.No.79,p.2) to the effect that the blocking ordinance would be passed by the City Council in approximately two or three weeks *regardless* of what the Plan & Zoning Commission did. This salient fact was conceded by the municipal defendants, whose counsel advised the trial court that "We concede we did everything . . . they [petitioners] say we did."* (Clk.Rec.No.103, p.3)

In July 22, 1974, the City Council passed an Interim Development Ordinance, Ordinance No. S25526, which set out the various findings of fact by the City Council as to the alleged need for the Interim Development Ordinance by the City of Sioux City. Nowhere in the purported findings is there a mention of urban renewal. However, the ordinance in effect stopped all development by plaintiffs and by General Growth until the original termination date of March 17, 1975. (Scott Dep., p.9, l.6 through p.11, l.5) After several extensions of the Interim Development Ordinance, the City Council on August 2, 1976, passed a new zoning ordinance, Ordinance No. S30424, which left plaintiffs' and General Growth's properties with a zoning classification that would not allow for the development of a regional shopping center and other retail and commercial developments (¶ I.H., Order for Final Pre-

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*We are obliged to recall the trenchant observation of Mr. Justice Stevens, dissenting in *Hoover v. Ronwin*, _____U.S._____ (1984):

> "The antitrust laws hardly create any inescapable burdens for the State; they simply require that decisions to displace the free market be made overtly by public officials subject to public accountability, rather than secretly in the course of a conspiracy involving representatives of a private guild accountable to the public indirectly if at all." (Slip Opinion [dissent], p.18)

Trial Conference; Clk.Rec.No.10), thereby reducing its value by approximately $1,000,000. This situation remains unchanged to this very day.

Reasons for Granting the Writ

I.

This Court's decision in *Community Communications Co., Inc. v. City of Boulder,* 455 U.S. 40, 102 S.Ct. 835 (1982), makes it abundantly clear that, in order for a municipality to enjoy state action immunity under the doctrine of *Parker v. Brown,* 317 U.S. 341, 63 S.Ct. 307 (1943), state policy authorizing anti-competitive conduct by a municipality must be "clearly articulated and affirmatively expressed". As the Court said in the *Boulder* case:

> "Our precedents thus reveal that Boulder's moritorium ordinance cannot be exempt from antitrust scrutiny unless it constitutes the action of the State of Colorado itself in its sovereign capacity . . . or unless it constitutes municipal action in furtherance or implementation of *clearly articulated and affirmatively expressed state policy* . . . ." (455 U.S. at 52; emphasis added)

The above standard articulated by the Court is a direct outgrowth of the plurality opinion in *City of Layfayette v. Louisiana Power & Light,* 435 U.S. 389, 98 S.Ct. 1123 (1978), wherein the Court decided that not every act of state agencies or subdivisions thereof was exempt from the anti-trust laws simply by reason of the agencies' or subdivisions' status.

These salient instructions from this Court were recognized by the district court in the case at bar in its May 3, 1983 opinion denying the municipal defendants' second motion for summary judgment, when that court said:

> "The question, pursuant to *Layfayette,* is whether the legislature contemplated the anticompetitive activity

alleged to have occurred when it adopted the urban renewal law. Again, it must be remembered that, contrary to the defendants' assertions, the plaintiffs are not complaining merely of a change in zoning. Plaintiffs complain of an alleged conspiracy to destroy business outside of the urban renewal area.

"It is beyond question that the City possessed extremely broad powers under the urban renewal law. However, the *Boulder* case makes it clear that even the broadest of powers, in itself, will not sustain a grant of *Parker* immunity. The Court believes that, although the powers granted in the urban renewal law [of Iowa] are more specific than the home rule amendment in *Boulder*, there is nothing in the urban renewal law that clearly articulates and affirmatively expresses a state policy authorizing anticompetitive activities." (Appendix C, pp.5c-6c)

The district court in the case at bar correctly applied the precedents of this Court in its May 3, 1983 opinion and committed error in its June 17, 1983 order (Appendix B) granting defendants' summary judgment on the theory that the Eighth Circuit's decision in *Gold Cross Ambulance v. City of Kansas City*, 705 F.2d 1005 (8th Cir. 1983), *cert. applied for 7-25-83*, had undercut the district court's original analysis.

In disagreeing with the trial court's May 3, 1983 opinion, quoted from above, the Eighth Circuit placed much emphasis upon that portion of Iowa's Urban Renewal Law (Appendix D, Iowa Code § 403.6) empowering a municipality engaged in urban renewal "to zone and rezone any part of the municipality."

Clearly, however, such authority must be read in the context of the legislative purpose of encouraging the clearance of slum and blighted areas. Indeed, this fundamental purpose is explicitly stated in § 403.2 of the Iowa Code which provides,

in relevent part:

> "1. It is hereby found and declared that there exists in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state . . . ."

Certainly slum and blighted areas often need to be rezoned in order for there to be successful urban renewal. However, it strains credulity to the breaking point that the Iowa legislature contemplated that a municipality could exercise its zoning powers with impunity under the anti-trust laws to reach out and rezone a tract of property located miles away from the blighted urban renewal area in question for the express purpose of precluding competition from petitioners' proposed shopping center. In the case at bar counsel for respondents conceded that the rezoning in question was done for the express purpose of precluding competition from petitioners and that the rezoning was done in concert with defendant Metro Center, Inc., a private developer with whom the city had contracted to redevelop its urban renewal area.

Because the state of Iowa has not affirmatively expressed and clearly articulated a policy to displace competition in the development of regional shopping centers with a regime of municipal monopoly, Sioux City's rezoning ordinance prohibiting plaintiffs from developing a competing shopping center does not fall within the ambit of *Parker v. Brown* immunity.

II.

Should this Court determine that the Eighth Circuit was correct in finding that Iowa's Urban Renewal Law contains a mandate for municipalities to engage in anti-competitive conduct in the context of urban renewal, which mandate is "clearly articulated and affirmatively expressed as state

policy", the question remains whether such policy must be "actively supervised" by the state itself as this Court held in *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.* (445 U.S. at 105). The Eighth Circuit held in the case at bar (just as it did in the *Gold Cross Ambulance* case, 705 F.2d at 1014,) that "the state supervision requirement [of *Midcal*] is not applicable to municipal officials." The Seventh Circuit held likewise in *Town of Hallie v. City of Eau Claire,* 700 F.2d 376 (7th Cir. 1983), *cert. granted 6-11-84.* These Eighth Circuit decisions put it, as well as the Seventh Circuit, in direct conflict with the Ninth Circuit, which in an unbroken string of decisions has come to precisely the opposite conclusion. See, *e.g., Miller v. Oregon Liquor Control Commission,* 688 F.2d 1222 (9th Cir. 1982); *Ronwin v. State Bar of Arizona,* 686 F.2d 692 (9th Cir. 1982), *rev'd on other grounds sub. nom. Hoover v. Ronwin,* ____U.S.____ (1984); *Knudsen Corp. v. Nevada State Dairy Commission,* 676 F.2d 374 (9th Cir. 1982); *Benson v. Arizona State Board of Dental Examiners,* 673 F.2d 272 (9th Cir. 1982); and *Turf Paradise Inc. v. Arizona Downs,* 670 F.2d 813 (9th Cir. 1982), *cert. denied* 102 S.Ct. 2308 (1982).

Significantly, in holding as it did in the case at bar (and in the *Gold Cross Ambulance* case) that state supervision was unnecessary when the anticompetitive activity was carried out by a municipality, the Eighth Circuit came to the exact opposite conclusion of the Iowa Supreme Court in applying Iowa law to the displacement of competition in municipal ambulance service in the State of Iowa. See *Neyens v. Roth,* 326 N.W.2d 294, 298 (Iowa 1982). Certainly the Iowa Supreme Court would not read into Iowa's Urban Renewal Law the anticompetitive mandate read into it by the Eighth Circuit (Division I of this petition), but in any event it must be conceded that there is no active state supervision of Iowa municipalities under Iowa's Urban Renewal Law (see Appendix D).

In this Court's majority opinion reversing the Ninth Circuit's *Ronwin* decision, on the ground that the actions of Arizona's bar examiners were in fact the actions of the Arizona Supreme Court (the sovereign) itself, and therefore immune from anti-trust attack under the doctrine of *Parker v. Brown*, this Court expressly declined to address the "clear articulation" and "active supervision" issues. (*Hoover v. Ronwin*, Slip Opinion, May 14, 1984, p.9) Petitioners respectfully submit that the time has come for the Court to address the "active supervision" requirement of *Midcal* in the context of municipal anticompetitive activities. In this regard, petitioners note that certiorari has been granted (June 11, 1984) in *Town of Hallie v. City of Eau Claire*, 700 F. 376 (7th Cir. 1983), and submit that certiorari should be granted in this case as well to resolve the conflict among the circuits.

III.

In dismissing petitioners' claims under 42 U.S.C. § 1983 for a wrongful taking of their property without due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, the Eighth Circuit simply bootstrapped its antitrust holdings in the first two segments of its opinion into a rationale for justifying the failure of the City of Sioux City to pay petitioners the fair market value of their property if the City wanted to legitimately eliminate competition for its own shopping center in the urban renewal area several miles away from petitioners' property. Concededly, the City could have condemned petitioners' property under the Urban Renewal Law (Appendix D, Iowa Code § 403.7) and in so doing eliminated the competitive threat. But, had it elected to proceed in this manner, it would have had to pay petitioners the fair market value of their property for use as a shopping center. Instead, the City chose to use its zoning power to crush a competitor without any payment of compensation. The perniciousness of permitting a city to so comport itself was recognized in part one of the

plurality opinion of this Court in the *City of Layfayette* case, wherein Justice Brennan said:

> "In 1972, there were 62,437 different units of local government in this country. Of this number, 23,885 are special districts which have a defined goal or goals for the provision of one or several services, while the remaining 38,552 represent the number of counties, municipalities, and townships, most of which have broad authority for general governance subject to limitations in one way or another imposed by the State. These units may, and do, participate in and affect the economic life of this Nation in a great number and variety of ways. When these bodies act as owners and providers of services, they are fully capable of aggrandizing other economic units with which they interrelate, with the potential of serious distortion of the rational and efficient allocation of resources, and the efficiency of free markets which the regime of competition embodied in the antitrust laws is thought to engender. *If municipalities were free to make economic choices counseled soley by their own parochial interests and without regard to their anticompetitive effects, a serious chink in the armor of antitrust protection would be introduced at odds with the comprehensive national policy Congress established.*" (98 S.Ct. at 1134; emphasis added)

This warning by Justice Brennan should be read against the backdrop of the concurring opinion of Chief Justice Burger in the *City of Lafayette* case, when he said:

> "This case turns, or ought to, on the District Court's explicit conclusion, unchallenged here, that 'these plaintiff cities are engaging in what is clearly a business activity; activity in which a profit is realized.' There is nothing in *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943), or its progeny, which suggests that

> a proprietary enterprise with the inherent capacity for economically disruptive anticompetitive effects should be exempt from the Sherman Act merely because it is organized under state law as a municipality. . . .
>
> "There is nothing in this record to support any assumption other than that this is an ordinary dispute among competitors in the same market. It is true that petitioners are municipalities, but we should not ignore the reality that this is the only difference between the Cities and any other entrepreneur in the economic community. Indeed, the injuries alleged in petitioners' complaint read as a litany of economic woes suffered by a business which has been unfairly treated by a competitor . . . .
>
> "As I indicated, concurring in *Cantor v. Detroit Edison*, 428 U.S. 579, 604, 96 S.Ct, 3110, 3123, 49 L.Ed.2d 1141 (1976), 'in interpreting Parker, the Court has heretofore focused on the challenged *activity*, not upon the identity of the *parties* to the suit'. . . ." (98 S.Ct. at 1139-1140)

In this case the "litany of economic woes" recited by petitioners are substantially the same as those referenced by the Chief Justice in his concurrence in the *City of Lafayette* opinion cited above. Like the city defendants in *City of Lafayette*, the municipal defendants in the case at bar had an expectancy of a profitable downtown shopping center, were the "partner" of defendant Metro Center, Inc., and, as conceded by the municipal defendants' counsel, they "had a substantial investment in the downtown" and "they weren't about to let anything happen that would undercut that investment." (Clk.Rec.No.103, pp. 2-4) Thus, in this dispute among competitors in the same market, the municipal defendants engaged in the business of developing shopping centers should be held to the same standards as other private

litigants. As suggested by the Chief Justice in *City of Lafayette*, this Court should focus on the challenged activity, not upon the identity of the parties to the suit. So viewed, the municipal defendants ought not to be able to finesse constitutional prohibitions on the taking of property without just compensation by invoking a magic incantation of *Parker v. Brown*.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

No. 83-1934

Gene P. Scott, Joyce A. Scott,
Arnold W. Madsen, Mary G. Madsen,
John A. Connolly, Frank Fitch,
As Trustees of the John L. Connolly Trust,
Appellants,

vs.

City of Sioux City, Iowa,
Metro Center, Inc., George Cole,
Margaret Prahl, William Gross,
Loren Callendar, Thomas Lindblom,
Donald L. Lawrenson, Larry Clausen and
Jan Albertson,

Appellees.

Appeal from the United States District Court
for the Northern District of Iowa

Submitted: February 14, 1984
Filed: June 8, 1984

Before LAY, Chief Judge, and HEANEY and BOWMAN, Circuit Judges.

HEANEY, Circuit Judge.

The appellants, owners of land near the southern city limits of Sioux City, Iowa, challenge the district court's grant of summary judgment to the defendant city and its council members in their action under the federal antitrust law, 15

U.S.C. §§ 1 and 2; the Civil Rights Act, 42 U.S.C. § 1983; and the Iowa Competition Law, Iowa Code Ann. § 553.4 (West Supp. 1983). The city council passed zoning ordinances which allegedly prevented the appellants from commercially developing their land on the city's periphery. The appellants allege the ordinances were the product of an agreement between the council and a downtown developer, Metro Center, Inc., to prevent competition with planned downtown redevelopment. The district court held that the city and its council were immune from antitrust liability under the state action doctrine; that the council members had absolute legislative immunity from the action brought under section 1983; and that the constitutional claims against the city were legally unsupportable. We affirm.

I.

BACKGROUND

Iowa passed an urban renewal law in 1957, Iowa Code Ann. §§ 403.1 - 403.20 (West 1976). The stated policy of that statute is to halt the physical decay of Iowa cities and the accompanying growth of urban social problems. The statute provides that each local government may formulate a workable program for using private and public resources to further urban renewal goals. Every city has the authority to prepare, adopt and revise from time to time a general plan for the physical development of the municipality as a whole. Section 403.6 delegates to every municipality the "powers necessary or convenient to carry out and effectuate the purposes and provisions of the urban renewal law," *id.* at § 403.6, including the power to execute contracts for redevelopment, and to "zone or rezone any part of the public body," *id.* at § 403.12(1).

Sioux City officials and businesses have been increasingly concerned with downtown development since the mid-1960s.

In 1964, a committee of downtown businesses and community leaders submitted a plan to the city council evaluating alternatives for maintaining a viable business climate in the city. The city council appointed a Central City Committee to formulate recommendations for orderly development of the central business district. The city applied for funds from the federal government to prepare a General Neighborhood Renewal Plan encompassing 215 acres and to plan a three-block total clearance project know as Central Business District-East (CBD-E). Eventually, the city acquired real estate in the CBD-E, offered it for redevelopment to private parties, and issued bonds for the construction of parking garages and other improvements. Meanwhile, an eleven-block area adjacent to the CBD-E was also targeted for redevelopment and designated the Central Business District-West (CBD-W). The city applied for federal assistance to survey and plan this area in 1966 but did not receive the funds until 1971. The city thereafter proceeded with active redevelopment of the CBD-W and entered into redevelopment agreements with a private developer, Metro Center, Inc.,[1] in February of 1974.

At the time the city council contracted with Metro Center, its president was Howard Weiner who had been a member of the Sioux City Council from January of 1973 to November 7, 1973. Weiner lost his bid for re-election to the city council and became president of Metro Center three weeks later. Metro Center submitted the sole bid to redevelop three parcels in the CBD-W. Its proposal included plans for a major hotel, department stores, a convention center and related commercial development. Under the redevelopment contract, the city was obligated to obtain federal grants for the CBD-W area, secure real estate, clear the property for redevelopment, and provide streets, sidewalks, street lights

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[1]Metro Center is a named defendant in this case, but is not a party to this appeal.

and other urban utilities. In return, Metro Center was obligated to purchase the property from the city, build the commercial facilities it had proposed, procure financing and secure tenants.

The appellants acquired their property along the southern limits of Sioux City in 1962. In 1966, the city annexed the property and apparently zoned it to permit commercial development. In May of 1974, soon after the city entered into the contract with Metro Center, the appellants sold 19 acres of this land to General Growth Properties, a real estate development company, for the development of a regional shopping center. The appellants retained approximately 70 acres of adjoining land which they allege they planned to develop commercially to take advantage of business drawn to the regional shopping center. As part of the purchase agreement, the appellants agreed to construct roads to facilitate the area development. When the transaction was complete, the parties publicly announced General Growth's plans to develop a regional shopping center.

The prospect of a regional shopping center competing for commercial tenants with the downtown project concerned Weiner, the president of Metro Center. Weiner states in his deposition that he talked to council members about the importance of limiting commercial development outside the downtown and specifically about the threat posed by General Growth's plan for a regional shopping center. On July 22, 1974, the city council enacted the Interim Development Ordinance which temporarily suspended unplanned development within the city pending the completion of the Plan and Zoning Commission's comprehensive review of the general plan and zoning ordinance. The interim ordinance did not change any zoning classifications, but it restricted the issuance of building permits, approval of site plans in designated areas, and certain types of residential and commercial development.

In November, 1975, appellant Gene Scott requested a "preplat" conference with the planning department and an informal review of the proposed development of his property under the Interim Development Ordinance. The Community Development Director advised the council that the request was in conflict with the provisions and policy of the interim ordinance. On February 17, 1976, the city council granted a conditional variance for preparation of a grading plan only. Scott never applied for a building permit or variance under either the interim ordinance or the permanent ordinance enacted by the city council on August 2, 1976. The permanent ordinance also left appellants' property with a zoning classification that does not allow for the development of a regional shopping center and other retail commercial developments.

The appellants filed their original complaint on January 19, 1979. The complaint alleged violations of the Sherman Act, 15 U.S.C. §§ 1 and 2, and was amended December 3, 1981 to allege a violation of the Civil Rights Act, 42 U.S.C. § 1983. The appellants contended that the city and its council members conspired with Weiner and Metro Center to prevent the appellants from developing their land around General Growth's planned regional shopping center. On December 15, 1982, the district court rejected the defendants' first motion for summary judgment holding that the state action immunity doctrine of *Parker v. Brown*, 317 U.S. 341 (1943), did not shield the municipal defendants and that, in view of this Court's decision in *Westborough Mall v. City of Cape Girardeau*, 693 F.2d 733 (8th Cir. 1982), *cert. denied*, 103 S. Ct. 2122 (1983), appellants' civil rights claim presented a question for the jury. On May 3, 1983, the court also denied a renewed motion for summary judgment in which the defendants contended that the Iowa Urban Renewal Law provided state authorization sufficient to trigger state action immunity. The court subsequently reconsidered that denial in light of our then-

recent opinion, *Gold Cross Ambulance & Transfer v. City of Kansas City*, 705 F.2d 1005 (8th Cir. 1983), *cert. filed*, 52 U.S.L.W. 3039 (July 25, 1983), and granted the defendants' summary judgment motion on June 17, 1983. This appeal followed.

II.

ANTITRUST CLAIMS

The initial issue in this case is whether the state action doctrine shields the municipal defendants from liability for violations of the federal antitrust laws.[2]

A. State Action Doctrine.

The Supreme Court established state action immunity from the federal antitrust laws in *Parker v. Brown, supra*, 317 U.S. at 350-351. It held a California marketing program enacted by the state legislature was exempt from challenge under the Sherman Act because the program "derived its authority from the legislative command of the state." *Id.* at 350. Because neither the Sherman Act itself nor its history suggested an intent to restrain state legislative action, the Court declined to extend the reach of antitrust liability to include such action:

> In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

Id. at 350-351.

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[2]The district court granted summary judgment on all claims, apparently including the actions brought under the Iowa Competition Law. The appellants do not specifically challenge the dismissal of the state claim, rather they contend the district court erred in holding the state action doctrine was applicable here.

The Supreme Court has since had occasion to address the question of whether, and under What circumstances, state action immunity is available to a state's municipalities.[3] In *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978), a plurality of four Justices rejected the claim that the state action doctrine extends to "all governmental entities, whether state agencies or subdivisions of the state * * * simply by reason of their status as much." *Id.* at 408. The Court emphasized that cities have not historically been treated as the equivalent of states and that serious economic dislocation could result if cities were free to place their own parochial interests above the national economic goals reflected in the antitrust laws. *Id.* at 412-413. The Justices nonetheless acknowledged that a state may choose to effectuate its policies through the instrumentality of its municipalities. Thus, the *Parker* doctrine would exempt from the ambit of antitrust liability municipal anticompetitive conduct engaged in "pursuant to state policy to displace competition with regulation or monopoly service." *Id.* The state policy relied on would have to be "clearly articulated and affirmatively expressed." *Id.* at 410. This does not mean the municipality must be able to point to a specific, detailed legislative authorization; rather, an adequate state mandate exists when the authority given to the municipality to operate in a certain area indicates "that the legislature contemplated the kind of action complained of." *Id.* at 415.[4]

In *Community Communications Co. v. City of Boulder*, 455 U.S. 40 (1982), the Court held that a state's general grant of extensive powers of self-government, or "home rule," to its municipalities does not provide specific enough state authorization to trigger state action immunity. Boulder had

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[3]Other Supreme Court decisions have further refined the *Parker* state action doctrine. *E.g., Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976); *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

[4]This standard has since been adopted by a majority of the Court. *Community Communications Co. v. City of Boulder*, 455 U.S. 40, 50-51 (1982).

passed an ordinance prohibiting a cable television company from expanding its business in the city. Boulder claimed state action immunity because of its status as a home rule municipality. The Supreme Court disagreed, stating "the requirement of 'clear articulation and affirmative expression' is not satisfied when the state's position is one of mere *neutrality* respecting the municipal actions complained of as anticompetitive." *Id.* at 55 (emphasis in original). A legislature cannot be said to have contemplated specific conduct if it allows a municipality to do what it pleases. *See id.*

This Circuit has had the opportunity to address the state authorization aspect of state action immunity in cases where a specific state statute engendered the challenged city actions. In *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1015, we held that Missouri's comprehensive statutory scheme regulating ambulance service in the state authorized the single-operator ambulance system adopted by Kansas City. In *Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency,* 715 F.2d 419 (8th Cir.), *cert. filed,* 52 U.S.L.W. 3441 (Nov. 18, 1983), a private solid waste disposal facility challenged a city agency's requirement that all solid waste generated in its jurisdiction be disposed of at its own facilities. We held state authorization for such activity could be implied from an Iowa statute which encouraged the construction of sanitary landfills by local governments and contemplated that revenue bonds would finance joint undertakings by cities and counties to provide common disposal facilities. *Id.* at 425-427.

These cases analyzed the state action immunity issue in two steps: First, the state legislature must have authorized the challenged municipal activity. Second, the legislature must have intended to displace competition. *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1101; *Central Iowa Refuse Systems, Inc. v. Des Moines Metro*

Solid Waste Agency, supra, 715 F.2d at 425. *See also,* Areeda, Antitrust Law ¶ 212.3a at 53 (Supp. 1982). Reasoning from the language in *City of Lafayette v. Louisiana Power & Light Co., supra,* 435 U.S. at 415, which states that the necessary legislative intent exists where "the legislature contemplated the kind of action complained of," we held the state policy to displace competition can be inferred "if the challenged restraint is a necessary and reasonable consequence of engaging in the authorized activity." *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1013; *see Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency, supra,* 715 F.2d at 427; Areeda, *Antitrust Immunity for "State Action" After Lafayette,* 95 Harv. L. Rev. 435, 446 (1981).

B. **The State's Authorization.**

To determine whether the state authorized the acts complained of we must first determine what those acts are. The appellants specifically challenge the council's passage of the ordinances which prevented them from commercially developing their land. They also challenge the council's dealings with Metro Center prior to the passage of the ordinances. Thus, the first question is whether the Iowa Urban Renewal Law authorized both zoning in furtherance of urban renewal goals and the relationship between the city and Metro Center complained of here.

The Iowa Urban Renewal Law gives both general and specific authorization for a municipality's use of zoning power to further the policy of urban renewal. Two extremely broad grants of power are contained in the statute. Section 403.6 begins with the statement that "[e]very municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter." Iowa Code Ann. § 403.6 (West 1976). Section 403.12 echoes this broad authorization giving local public bodies the powers to

do "any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal project." *Id.* § 403.12(1)(c).[5] The specific powers granted to municipalities for urban renewal include the power to zone or rezone any part of the municipality or public body. *Id.* §§ 403.6(8) & 403.12(1)(h).

The appellants argue the city's power to zone to further its urban renewal plan is limited to those areas that have been designated for redevelopment. The breadth of the grant of power contained in these provisions, together with the language authorizing zoning or rezoning of any part of the municipality or public body, belies any such limitation in the state's authorization. Thus, the urban renewal law clearly authorized Sioux City to zone outlying areas of the city to protect urban renewal goals.

Iowa's urban renewal law also authorizes municipalities to contract with private developers for the commercial redevelopment of a designated urban renewal area. The municipality may acquire real estate in a designated area. *Id.* §§ 403.6(3) & 403.7. That property may then be sold, leased or otherwise transferred to private companies to be developed for, among other things, commerical uses. *Id.* § 403.8(1). The private purchasers are obligated to devote the property to uses specified in the overall urban renewal plan and other public interest requirements determined by the municipality. *Id.* The municipality furnishes roads, public utilities, and other public improvements for the urban renewal project. *Id.* § 403.6(2). Thus, Iowa law authorized the contract between the Sioux City Council and Metro Center and also, presumably, their preliminary dealings together as contracting parties.

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[5]Section 403.6 enumerates the powers delegated to municipalities. Iowa Code Ann. § 403.6 (West 1976). Section 403.12 enumerates the powers granted to public bodies, *id.* § 403.12, which includes political subdivisions of the state, *id.* § 403.17(3). Thus, the powers included in both sections are delegated to the state's municipalities, although section 403.6 specifically addresses municipalities.

The more difficult question is whether the Iowa Legislature intended to sanction the specific zoning ordinances complained of here. The district court, following our opinion in *Gold Cross Ambulance,* held that because Sioux City's zoning was a necessary and reasonable consequence of engaging in the authorized urban renewal activity, the intent element was satisfied. The court found the city's ordinances were necessary to protect its investment in its downtown development. The court further found that the ordinances were not an unreasonable consequence of the state's goal of promoting urban redevelopment combined with the broad authority vested in the municipalities to accomplish this goal.

We agree with the district court that the importance the Iowa Legislature placed on urban renewal, and the broad powers it gave to municipalities to address the problem, support a finding that the legislature contemplated the type of zoning ordinances passed by Sioux City. The Iowa Legislature considered the decay of its urban areas a serious threat to the economic, social and physical welfare of state residents. It noted that the existence of slum and blighted areas contributes to the spread of disease and crime, reduces tax revenues, impairs the growth of municipalities and retards the provision of housing accommodations.[6] *Id.* § 403.2(1). To combat this "growing menace," the legislature empowered municipalities not only to zone, inspect, and regulate private

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[6]Iowa Code Ann. § 403.2 (West 1976) provides in pertinent part:

> 1. It is hereby found and declared that there exists in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern * * *.

real estate, but to do all things necessary to assure the success of their urban renewal projects.[7] The legislature's deep concern and broad delegation of power contributes to our finding that it contemplated the challenged zoning.

A more compelling reason to find the necessary legislative intent, however, is that the legislature has put municipalities in the position of partially financing commercial development. The Iowa Urban Renewal Law allows cities to raise a substantial amount of money for their urban renewal ventures through federal and local government loans, tax levies and the issuance of bonds. *Id.* §§ 403.6(5), 403.6(8) & 403.9. The district court found Sioux City had raised approximately $30 million in public financing to support its urban renewal project.

We can assume that the state legislature appreciated the harsh economic realities faced by the city that undertakes such a project. In *Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency, supra,* 715 F.2d at 427, this Court held the Iowa Legislature contemplated a monopoly by a metropolitan solid waste facility when it authorized the financing of such facilities by revenue bonds. "When ascertaining what was in the minds of the legislators, we cannot ignore the realities of the municipal bond market in the mid 1970's. The legislature surely realized the importance of assuring a source of repayment in order to make the bonds

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[7]In addition to the general grant of all powers "necessary or convenient to carry out and effectuate the purposes and provisions of this chapter," section 403.6 specifically empowers municipalities, among other things, to carry out urban renewal projects; to make and execute contracts; to disseminate slum clearance information; to contract for the repair and furnishing of all services and facilities for or in connection with an urban renewal project; to acquire any real or personal property for administrative purposes and to hold, improve, clear or prepare such property for development; to encumber or dispose of any real property; to invest urban renewal project funds; to obtain money from the federal, state or county government; to make all necessary surveys and planning; to plan for the relocation of people and businesses; to appropriate funds; to levy taxes; to zone and rezone any part of the municipality; to sell and convey real property. Iowa Code Ann. § 403.6 (West 1976).

marketable." *Id.*

Similarly, here, the state legislature must have anticipated that once a municipality became financially and legally committed to commercial development in urban areas, it would use its delegated powers, including the power to zone and rezone, to protect that commitment. Consultants to the Sioux City Council advised discouraging shopping centers in favor of the downtown because dispersing major retailing facilities among several locations in a market of Sioux City's scale would reduce the chances of success for the downtown project.[8] The challenged ordinances were thus a reasonable and necessary consequence of the city's role in implementing state urban renewal goals.

In sum, we hold the Sioux City ordinances meet both prongs of the state action immunity test as stated in *Gold Cross Ambulance:* First, the Iowa Legislature, in both general and specific provisions of the Iowa Urban Renewal Law, authorized the challenged activities — zoning to protect urban renewal goals and the relationship between the city and Metro Center. Second, the legislature contemplated that municipalities might enact the type of ordinances enacted by Sioux City. We base this latter conclusion on the belief that the city's zoning action is the necessary and reasonable consequence of allowing municipalities to join in downtown redevelopment projects with private commercial developers and invest substantial sums of public money in such projects.

The district court also properly concluded that the state action doctrine did not require the state to actively supervise the challenged restraint. The Supreme Court has required active state supervision in those cases where it has extended state action immunity to private entities or individuals. *See, e.g., California Retail Liquor Dealers Association v. Midcal*

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[8]*Scott v. City of Sioux City,* C79-4009, slip op. at 11 (W.D. Iowa April 4, 1983) (order for final pretrial conference).

Aluminum, Inc. 445 U.S. 97, 99 (1980); *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 582 (1976). In *Gold Cross Ambulance & Transfer v. City of Kansas City, supra*, 705 F.2d at 1014, we held, however, that the state supervision requirement is not applicable to municipal officials. Unlike private parties, municipal officials are accountable for their decisions to the citizens they represent. State supervision is therefore less necessary to prevent abuse of power. Moreover, while the state authorization requirement for municipal decisions tests whether the challenged local activity is truly state action, the state supervision requirement serves that function for private conduct. *Id.*

The appellants argue that, after *Gold Cross Ambulance*, state supervision is still applicable when a municipality is engaged in conduct outside the scope of traditional governmental functions. We need not reach this issue because we agree with the district court that zoning for urban renewal purposes is a traditional governmental function designed to protect public health and safety. The mere investment of public funds does not make a project proprietary rather than governmental. *See Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency, supra*, 715 F.2d at 428. We thus conclude active state supervision of Sioux City's urban renewal projects and attendant zoning decisions was not necessary to shield Sioux City and its officials from antitrust liability in this case.

C. **Acts Outside the State's Authorization.**

Our holding that the Iowa Urban Renewal Law provides a clear and affirmative expression of a state policy favoring Sioux City's action does not end our inquiry. The appellants assert the city council acted outside the state authorization and thus its actions cannot be shielded from antitrust liability. They allege that the city's zoning decision was the product of an anticompetitive "conspiracy" between the city and

Metro Center rather than urban renewal policy. They further allege that because the city council did not follow the procedures outlined in the urban renewal statute for amending the plan when it passed the challenged ordinances, it forfeited state authorization.

A city council could conceivably violate the antitrust laws by entering into an agreement with a private developer to restrain trade. *See Westborough Mall v. City of Cape Girardeau, supra,* 693 F.2d at 746; *Mason City Center Association v. City of Mason City,* 671 F.2d 1146, 1149 (8th Cir. 1982); *Whitworth v. Perkins,* 559 F.2d 378, 381 (5th Cir. 1977), *vacated on other grounds,* 435 U.S. 81 (1978); Areeda, Antitrust Law, *supra,* ¶ 203.3 at 12-13. In this case, however, the appellants have alleged no actions which appear outside the ambit of the city's antitrust immunity.

As previously stated, the city is immune from antitrust liability for passage of the interim and permanent ordinances. The appellants nonetheless intimate that the city should be subject to antitrust liability because Metro Center urged the council members to pass the ordinances.[9] We reject this contention. Antitrust immunity is meaningless in this context unless it extends to the council's proper dealings with Metro Center prior to the council's official zoning action. The Iowa Urban Renewal Law authorized Sioux City's joint endeavor with Metro Center to redevelop the city's decaying commercial district. Metro Center thus had legitimate reason to discuss with council members the effect a regional shopping center would have on their joint project. Since the state has authorized both the business relationship between the city and Metro Center and the city's zoning actions, it is clear that Metro Center's proper dealings with the council fall

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[9]Because we find state action immunity shields the defendants in this case, we need not discuss possible immunity under the *Noerr-Pennington* doctrine. *See United Mine Workers v. Pennington,* 381 U.S. 657 (1965); *Eastern Railroad Presidents v. Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961).

within the ambit of antitrust immunity.

The appellants point to the relationship between the president of Metro Center, Howard Weiner, and some of the city council members as proof of an anticompetitive agreement. Weiner was on the city council just prior to becoming president of Metro Center. Metro Center submitted the sole bid to redevelop CBD-W while Weiner was on the council. Weiner states in his deposition that he had close personal friendships with at least five of Sioux City's council members. He talked to these and other members of the council about General Growth's plans for a regional shopping center and urged the council to take preemptive action. Based on his deposition, there is no doubt Weiner used his best efforts to get the council to pass the ordinances favoring the downtown project.

Without the broad grant of immunity in this case, Weiner's activities may have preserved the conspiracy question for the jury. In *Westborough Mall v. City of Cape Girardeau, supra,* 693 F.2d at 746, we stated that "a conspiracy to thwart normal zoning procedures and to directly injure the plaintiffs by illegally depriving them of their property is not in furtherance of any clearly articulated state policy." In that case, however, we did not have specific legislative authorization of the acts complained of and the requisite legislative intent. We do not think Sioux City should be deprived of immunity simply because Weiner knew some of the council members and perhaps talked to them personally about factors important to the success of the downtown project. The purpose of state action immunity is to allow states and municipalities with state authorization to pursue health and welfare goals without threat of antitrust liability. That purpose would be frustrated in this case if the mere label "conspiracy" were enough to warrant an antitrust trial. The appellants do not allege that the council members were involved in bribery or other illegal acts. We thus conclude the

appellants' allegations do not remove the municipal defendants from the ambit of antitrust immunity.

Neither do we find the appellants' allegation that the city departed from the state mandated procedures in passing the challenged ordinances adequate grounds for stripping the city of immunity. The city's departure from state procedural requisites would have to be extreme to warrant the threat of antitrust liability. State authorization for antitrust purposes does not require administrative decisions that are free from ordinary errors. As a commentator recently noted:

> The *Lafayette* authorization requirement should not be manipulated in such a way as to thwart the fundamental *Parker* policy against antitrust scrutiny of state action. The antitrust court should require no more than that the result of the agency's act or decision was of the sort contemplated by state anticompetitive policy. "Ordinary" errors or abuses in the administration of jurisdiction conferred by the state should be left for state tribunals to review.

Areeda, Antitrust Law, *supra*, ¶ 212.3b at 57.

Here, the appellants apparently allege the city did not amend its general urban renewal plan before enacting the ordinances. We do not view this error to be of a magnitude that necessitates abrogating the city's antitrust immunity.

In sum, we do not believe a material issue of fact exists as to whether the city acted outside the state's authorization for antitrust purposes either in its dealings with Metro Center prior to passing the challenged ordinances or in the procedures followed to enact them. We therefore affirm the district court's grant of summary judgment to the municipal defendants on appellants' antitrust claims.

III.

CONSTITUTIONAL CLAIMS

The district court also granted the municipal defendants summary judgment on the appellants' constitutional causes of action brought under 42 U.S.C. § 1983. The appellants' broadly worded complaint alleges that the city's zoning action deprived them of equal protection, substantive due process, procedural due process, and constituted a taking without just compensation. The district court rejected the appellants' constitutional claims and also held that the city council members had absolute legislative immunity. Because we agree that the appellants' constitutional claims are meritless, we affirm on that basis and do not address the legislative immunity issue.

The appellants claim they were denied substantive due process because the city's ordinances denied them the right to use their property in accordance with the zoning classification in effect when they made their initial plans to commercially develop the property. We agree with the district court that the ordinances do not infringe on any fundamental rights.[10] Thus, the ordinances survive a substantive due process challenge if they were designed to accomplish an objective within the government's police power, and if a rational relationship existed between the provisions and purpose of the ordinances. *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1015. A finding that the ordinances had a rational basis also defeats the appellants' equal protection claim.

As explained in the antitrust section of this opinion, the city designed the interim and permanent ordinances to further

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[10]The appellants contend the ordinances infringed on their fundamental right to receive just compensation for a taking. We think that the appellants' taking claim should stand or fall on its own merit, rather than serve as a back door for other constitutional challenges.

its urban renewal goals. The state's urban renewal law clearly placed this objective within the city's power. Moreover, the ordinances were rationally related to the goal of urban renewal. The city had already made a substantial investment in revitalizing its downtown commercial district. It had good reason to believe the investment would fail if competing regional shopping centers siphoned off the market. Because the city had a rational basis for passing the challenged ordinances, we hold summary judgment was proper on the appellants' substantive due process and equal protection claims.[11]

The appellants' procedural due process claim must also fail. To sustain a procedural due process claim, the appellants must first establish that they possessed "a legitimate claim of entitlement" to the zoning and building permits which would allow commercial development of their land. *Board of Regents v. Roth,* 408 U.S. 564, 577 (1972). This entitlement could be based upon state or local law or upon an express contract or mutual understanding with the defendants. *See id.* at 577-578; *Perry v. Sindermann,* 408 U.S. 593, 600-603 (1972); *Brockell v. Norton,* 688 F.2d 588, 590-591 (8th Cir. 1982). For example, under Iowa vested rights law, the appellants might have acquired a property right in the use of their commercial zoning if they made legitimate and valuable expenditures before passage of the ordinance on the assumption the land would retain is commercial zoning. *See Nemmers v. City of Dubuque,* 716 F.2d 1194, 1197-1198 (8th Cir. 1983).[12] Application for a building permit at a time when commercial development was permissible under the applicable

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[11]The appellants question whether the city's proffered rationale is the real reason the city passed the ordinance. As long as a rational basis exists, however, it need not be the real reason for the governmental action to satisfy substantive due process. *See, e.g., Williamson v. Lee Optical Co.,* 348 U.S. 483, 490 (1955).

[12]The appellants have belatedly asserted the vested rights theory to this Court as a separate cause of action. This theory is a matter of state law not actionable under 42 U.S.C. § 1983. *See Nemmers v. City of Dubuque,* 716 F.2d 1194, 1197 (8th Cir. 1983).

ordinances might also have created a claim of entitlement sufficient to trigger due process guaranties. *See Scott v. Greenville County*, 716 F.2d 1409, 1418 (4th Cir. 1982) (applying South Carolina law). Here, however, appellants do not allege they had applied for any building permits or made any appreciable expenditures before the interim ordinance was passed.[13] Without a legitimate claim of entitlement, the appellants' procedural due process claim fails.[14]

Similarly, the appellants' taking claim is without merit. The city's action did not confiscate the appellants' property, it merely diminished the land's value. Diminution in value, standing alone, does not establish a "taking." *See, e.g., Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 131 (1978); *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Appellants allege no facts which would take their claims outside this general rule.

In sum, we affirm the district court's grant of summary judgment on the appellants' section 1983 claims.

IV.

CONCLUSION

We agree with the district court that under this Circuit's precedents, Sioux City is shielded from antitrust liability. The state legislature authorized municipalities to invest public money in joint ventures with private developers to renew

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[13]The appellants do not allege in either their complaint or their amended complaint that they spent any money preparing their land for commercial development. Scott's deposition contains some reference to expenditures made to prepare a plat, but that was after the passage of the interim ordinance. Although the district court found these expenditures were significant enough to confer standing, *see Scott v. City of Sioux City*, No. C79-4009 slip op. at 4 (N.D. Iowa Dec. 17, 1982) (unpublished order), they are not sufficient to create a vested right under Iowa law. *See Nemmers v. City of Dubuque, supra*, 716 F.2d at 1197-1198.

[14]At oral argument the appellants' attorney asserted that the city had promised the appellants commerical zoning when the land in question was annexed to the city. The existence of such an agreement was not alleged before the district court, and we decline to consider it here.

decaying urban areas. The legislature delegated to the municipalities general and specific powers to do all things necessary, including zoning and rezoning all parts of the municipality, to assist and protect these urban renewal projects. In our view, Sioux City's ordinances protecting the downtown commercial district are a reasonable and necessary consequence of the state's authorization. Furthermore, because the Iowa Urban Renewal Law also authorized the council's dealings with Metro Center prior to passage of the ordinance, they are also accorded antitrust immunity. Finally, we also affirm the district court's grant of summary judgment on the appellants' section 1983 action.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION
GENE P. SCOTT, et al.,

Plaintiffs,

vs.

THE CITY OF SIOUX CITY, IOWA, et al.,

Defendants.

NO. C79-4009

ORDER

This matter comes before the Court pursuant to the defendants' motion to reconsider this Court's Order of May 3, 1983 in light of the recent opinion of the Eighth Circuit Court of Appeals in *Gold Cross Ambulance v. City of Kansas City,* No. 82-1913 (8th Cir. 4/26/83). In the alternative, the defendants request that this Court certify an interlocutory appeal pursuant to 28 U.S.C. 1292. The Court held a hearing in this matter at which plaintiffs and defendants were represented. This Court, having reconsidered its May 3, 1983 Order in light of *Gold Cross Ambulance,* now grants the defendants' motion for summary judgment.

The facts and circumstances leading to the filing of the complaint in this matter have been adequately set forth in this Court's prior opinions. This Court has twice denied motions for summary judgment when the defendants raised the state action immunity of *Parker v. Brown,* 317 U.S. 341 (1943). In this Court's Order of December 17, 1982, the Court held that state zoning laws do not confer *Parker* immunity on the defendants in this case. In doing so, the Court relied heavily on the case of *Westborough Mall v. City of Cape Girardeau,*

693 F.2d 733 (8th Cir. 1982). In this Court's Order of May 3, 1983, a claim of *Parker* immunity under Iowa urban renewal law was rejected. However, it appears to the Court that its analysis of *Parker* immunity in the May 3, 1983 Order has been rendered inaccurate by the Eighth Circuit Court of Appeals' ruling in *Gold Cross Ambulance.*

This Court's May 3, 1983 Order

There were several concerns that prompted the Court to reject *Parker* immunity based on Iowa urban renewal law. First, this Court examined what it believed to be strong language in *Community Communications v. City of Boulder,* 455 U.S. 40 (1982), and *Westborough Mall, supra,* requiring that the state policy "clearly articulate and affirmatively express" an approval of the challenged anticompetitive activity. Analogizing this case to *Boulder,* this Court held that "the powers of eminent domain and rezoning do not *necessarily contemplate* that these powers will be used in an anticompetitive manner."[1] (Emphasis added.) In light of *Gold Cross Ambulance,* the Court now believes that its use of the words "necessarily contemplate" was inaccurate.

Second, this Court was persuaded that the "active supervision" requirement for state action immunity set forth in *California Liquor Dealers v. Midcal Aluminum,* 455 U.S. 97 (1980), applied in cases involving municipal defendants. As authority for this proposition, this Court noted that the *Midcal* case cited *Lafayette v. Louisiana Power and Light,* 435 U.S. 387 (1978), for the active supervision requirement. *Lafayette,* of course, was a case involving a municipal defendant.[2] However, this portion of this Court's May 3, 1983 opinion is also rendered questionable in light of *Gold Cross Ambulance.*

Finally, in support of their motion for summary judgment, the defendants cited Areeda, *Antitrust Immunity for*

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[1]May 3, 1983 Order at p. 7.
[2]Actually, the municipality was a defendant to a counterclaim.

"State Action" after Lafayette, 95 Harv. L. Rev. 435 (1981). This Court discounted the persuasiveness of this law review article because it appeared to be critical of recent Supreme Court cases and was, in this Court's opinion, directed more towards the author's view of what the law ought to be as opposed to what the law is. This conclusion is also somewhat inaccurate after *Gold Cross Ambulance.*

The Effect of Gold Cross Ambulance on Parker Immunity Claims

Under *Gold Cross Ambulance,* it would appear to this Court that an expression of state policy is sufficient to establish *Parker* immunity if it is comprised of two elements. *The legislature must have authorized the challenge activity and it must have done so with an intent to displace competition.* The *Gold Cross* Court emphasized language in *Lafayette v. Louisiana Power and Light, supra,* stating that a specific, detailed legislative authorization of monopoly service need not exist to infer the necessary state intent.

> In other words, a sufficient state policy to displace competition exists if the challenged restraint is a necessary or reasonable consequence of engaging in the authorized activity. Areeda, *Antitrust Law, supra,* para. 212.3, at 54; Areeda, *Antitrust Immunity for "State Action" after Lafayette,* 95 Harv. L. Rev. 435, 446 (1981)[3].

In the context of the matter now before this Court, an important portion of the *Gold Cross Ambulance* case is the holding that active state supervision is not an element of *Parker* immunity for government defendants exercising traditional government functions such as the protection of public health and safety. This is also consistent with the opinion of Professor Areeda, who states that the courts requiring active

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[3]*Gold Cross Ambulance* slip op. at pp. 12-13.

supervision of governmental defendants are in error, Areeda, *Antitrust Immunity for "State Action" after Lafayette, supra,* at n.50.

Application of Gold Cross Ambulance to Scott v. City of Sioux City

This Court, in its May 3, 1983 Order, noted the broad authority given to the City to conduct urban renewal activities. Among those activities authorized are as follows:

> 403.6 Powers of the Municipality. Every municipality shall have *all the powers necessary or convenient* to carry out and effectuate the purpose and provisions of this chapter, . . .
>
> 403.12 Powers of the Municipality.
>
> 1. For the purpose aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:
>
> . . .
>
> (c) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal project;
>
> . . .
>
> (h) Plan *or replan, zone or rezone any part of the public body* or make exceptions from building regulations.

(Code of Iowa Chapter 403) (emphasis added). Thus, it appears from these sections and others contained in Chapter 403 that the municipality was given both general and specific powers to effectively provide for urban renewal.

The second question under *Gold Cross Ambulance* is whether the legislature authorized the activity with an intent to displace competition. If the challenged restraint is a necessary or reasonable consequence of engaging in the authorized activity, then the element of intent is satisfied. In *Central Iowa Refuse Systems v. Des Moines Metropolitan Area Solid Waste Agency,* No. 79-32-1 (S.D. Iowa 12/9/82), Chief Judge Stuart found, in the context of a solid waste disposal operation, that anticompetitive activity was necessary in order to assure financial protection for investors who bought bonds to support the project. If this example of "necessity" is accurate, it would surely apply to the matter now before this Court since approximately $30 million in public financing was raised to support the Sioux City urban renewal project.

Under *Gold Cross Ambulance,* the challenged restraint does not have to be necessary in order for the Court to find legislative intent to displace competition. If the challenged restraint is merely a reasonable consequence of engaging in urban renewal projects, then there is a sufficient inference of state intent to displace competition. The term "reasonable" has been defined as "fit and appropriate to the end in view," *Black's Law Dictionary,* 4th ed., p. 1431. The goal of urban renewal, of course, is to rehabilitate portions of the city that have suffered severe economic setbacks by concentrating municipal resources in the blighted area in an attempt to promote economic prosperity in the area. In light of the goals of urban renewal, the broad authority afforded the City to accomplish it, and the practical difficulties in achieving such a task, the Court cannot say that the displacement of competition in outlying areas was an unreasonable consequence of engaging in urban renewal.

The defendants attempt to distinguish *Gold Cross Ambulance* by arguing that urban renewal is not a "traditional governmental function" as was present in *Gold Cross Ambulance.* The Court, in its May 3, 1983 Order, held that it is

a traditional government function, p 7. This conclusion is supported by the declaration of policy contained in the Iowa Urban Renewal Law, Code of Iowa Chapter 403:

> It is hereby found and declared that there exist in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, morals and welfare of the residents of this state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens . . . and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern in order that the state in its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency and consume an excessive portion of state revenues, because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

Thus, the Court still believes that urban renewal is a traditional governmental function as the term is used in *Gold Cross Ambulance.*

The defendants also direct the Court's attention to *Neyens v. Roth,* 326 N.W.2d 294 (Iowa 1982), a state unfair competition case, wherein the Iowa Supreme Court refused to extend the state statutory counterpart of *Parker* immunity to actions taken pursuant to the Iowa home rule amendment. The Court notes that the *Neyens* opinion requires "active state supervision" as part of its *Parker* immunity. *Gold Cross Ambulance,* as previously noted, has specifically abandoned this requirement in federal antitrust cases. The *Neyens* opinion did not address Iowa urban renewal law. For these reasons, the *Neyens* case is distinguishable.

In this Court's Order of December 17, 1982, the Court denied the City Council defendants' claim of legislative im-

munity under 42 U.S.C. 1983 for two reasons. First, the case of *Gorman Towers v. Bogoslawsky*, 626 F.2d 607 (8th Cir. 1980), seriously questioned whether zoning fell into the category of legislative functions protected by the immunity. Second, the Court held that a conspiracy to restrain trade and to monopolize were outside of the scope of clear legislative functions. The preceding analysis with respect to state action immunity suggests that the defendants were acting to authority given them under the law of the State of Iowa. Therefore, the defendants who were sued as members of the City Council have absolute immunity from suit under 42 U.S.C. 1983. On this basis, these defendants' motion for summary judgment is sustained. Having determined that a rational (reasonable) relationship existed between the challenged activities and Iowa urban renewal law, the Court will sustain the City of Sioux City's motion for summary judgment which attacks plaintiffs' equal protection claim. As in *Gold Cross Ambulance,* no fundamental right or suspect class is involved here and, thus, the Court looks only to see if a rational relationship exists between the challenged activity and the statute. The Court has found that such a relationship exists.

In granting defendants' motion for summary judgment, the Court sympathizes with the plaintiff landowners. One day they had something very valuable and, within a matter of years, the City sacrificed it for its project. However, the Court cannot write new antitrust law that flies in the face of *Gold Cross Ambulance.*

This Court has denied summary judgments on the premise that it was confining the exercise of state granted power to anticompetitive activities that were "clearly articulated and affirmatively expressed" as state policy. *Gold Cross Ambulance* expands the parameters to all situations where anticompetitive activity is reasonable under a state statutory scheme. On this basis, the Court concludes that the defendants acted within the *Parker* immunity.

Upon the foregoing,

IT IS THEREFORE ORDERED that defendants' motion to reconsider is granted. The defendants' motion for summary judgment on all claims is granted.

IT IS FURTHER ORDERED that the Clerk of Court for the Northern District of Iowa shall enter judgment in favor of the defendants and against the plaintiffs on all claims for relief. This action is therefore dismissed.

June 17, 1983.

Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT

Copies mailed certified return receipt requested on 6-17-83, and with copies of Judgment, w/Bill of Costs form attached, to:

Patrick Nugent, Atty. City of S.C., P.O. Box 447, Sioux City 51102

Lance A. Coppock & Edward W. Remsburg, 300 Liberty Bldg., Des Moines 50309.

Courtesy Copy to: Timothy W. Shuminsky 224 Davidson Bldg., Sioux City 51102

David E. Vohs, Emmanuel S. Bikakis, Wm. L. Heubaum, 340 Insurance Exchange Building, Sioux City 51101.

Deputy

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

GENE P. SCOTT, et al.,

Plaintiff,

vs.

THE CITY OF SIOUX CITY, IOWA, et al.,

Defendants.

NO. C 79-4009

ORDER

This matter comes before the Court pursuant to a motion for summary judgment on behalf of the defendants.[1] The Court held a hearing in this matter on April 21, 1982 at which all remaining parties were represented. Based on the briefs and argument of counsel and the entire record herein, the Court denies the motion for summary judgment.

On December 17, 1982, this Court entered an order resolving a previous motion for summary judgment in favor of the plaintiff. The defendants, having procured new counsel for purposes of trial in this matter, have renewed the summary judgment motion as it pertains to the request that this action be dismissed on the basis of the state action immunity announced in *Parker v. Brown*, 317 U.S. 341 (1943). In the previous motion for summary judgment, counsel argued that Iowa zoning law provided a basis for the invocation of the state action immunity. This claim was rejected primarily on the

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[1]The Defendant Metro Center, Inc., has not joined in this motion. On February 4, 1983, counsel for Metro Center filed notice that he will no longer participate in this matter. This is based on his assertion that Metro Center, Inc. is a defunct organization.

authority of *Westborough Mall, Inc. v. City of Cape Girardeau,* 693 F.2d 733 (8th Cir. 1982). The renewed motion for summary judgment urges that Iowa urban renewal law, Code of Iowa Chapter 403, provides the basis for the invocation of this doctrine. The resolution of this issue requires an analysis of Iowa urban renewal law under the factors set forth in *Parker v. Brown, supra,* and the more recent Supreme Court decisions of *Community Communications v. City of Boulder,* 445 U.S. 40 (1982); *California Liquor Dealers v. Midcal Aluminum,* 455 U.S. 97 (1980); *Lafayette v. Louisiana Power & Light Co.,* 435 U.S. 387 (1978); *Cantor v. Detroit Edison,* 428 U.S. 579 (1976); and *Goldfarb v. Virginia State Bar Ass'n,* 421 U.S. 773 (1975).

In *Goldfarb,* consumers presented an antitrust challenge to a minimum fee schedule governing rates to be charged by lawyers. Attorneys who refused to abide by the guidelines set forth in the fee schedule were subject to discipline by the Virginia Board of Professional Responsibility. The United States Supreme Court rejected *Parker* immunity under the circumstances. The Court stated that the threshold question is whether the activity is required by the state acting as a sovereign.

> It is not enough that, as the County Bar puts it, anti-competitive conduct is "prompted" by state action; rather, anticompetitive activities must be compelled by direction of the state acting as a soveriegn.

Goldfarb, at p. 791.

In the case of municipal defendants, an adequate state mandate for anticompetitive activity exists when it is found from the authority given a governmental entity to operate in a particular area that the legislature contemplated the kind of action complained of, *Lafayette,* at p. 415. However, even a lawful monopolist may be subject to antitrust restraints when it seeks to extend its monopoly in a manner not contemplated by its authorization, *Lafayette,* at p. 417.

Another important factor to consider in determining whether the state action exemption applies is whether the challenged restraint on trade has been clearly articulated and affirmatively expressed as state policy. In *Community Communications v. Boulder, supra,* a municipality was denied *Parker* immunity when it adopted an emergency ordinance prohibiting the expansion of a local cable TV franchise. The ordinance was enacted in order to give the city council time to draft a model cable television ordinance and to invite other new businesses to enter the cable TV market. The City operated under the Colorado Constitution's home rule amendment which gives each city every power possessed by the state legislature for conducting local and municipal affairs.

The United States Supreme Court in *Boulder* held that the home rule did not clearly articulate and affirmatively express the challenged restraint as state policy.

> But plainly the requirement of "clear articulation and affirmative expression" is not satisfied when the state's position is one of mere *neutrality* respecting the municipal actions challenged as anticompetitive. A state that allows its municipalities to do as they please can hardly be said to have "contemplated" the specific anticompetitive actions for which municipal liability is sought. Nor can those actions be truly described as "comprehended within the powers *granted,*" since the term, "granted" necessarily implies an affirmative addressing of the subject by the state. . . . Acceptance of such a proposition — that the general grant of power to enact ordinances necessarily implies state authorization to enact specific anticompetitive ordinances — would wholly eviscerate the concepts of "clear articulation and affirmative expression" that our precedents require.

Boulder, supra, at pp. 55-56.

In order to receive immunity under the doctrine announced in *Parker v. Brown, supra,* the cases also require that

the clearly articulated and affirmatively expressed policy must be "actively supervised" by the state itself, *Midcal Aluminum,* at p. 105 *(citing Lafayette).* The defendants maintain that the *Boulder* case casts doubt on whether the active supervision requirement is necessary for state action in cases involving municipal bodies. They cite Areeda, *Antitrust Immunity for "State Action" after Lafayette,* 95 Harvard L.Rev. 435 (1981), for this proposition. The Court notes that this article, while very scholarly, is extremely critical of the recent Supreme Court decisions in the area of state action and is directed toward the author's view of what the law ought to be.

This Court believes that the active supervision requirement is still necessary after *Boulder.* The Court in *Boulder* did not address the issue because it found no clearly articulated and affirmatively expressed policy authorizing anticompetitive activity. This Court concludes that the Supreme Court's citation to *Lafayette* (when it stated that the policy must be "actively supervised" by the state itself, *Midcal*) is ample authority for the proposition that the active supervision requirement applies to municipal bodies.[2]

The defendants have addressed at length the provisions of the Iowa urban renewal law that they believe establish a clearly articulated and affirmatively expressed policy authorizing anticompetitive activity by municipalities. The Code of Iowa Section 403.6 gives every municipality all the powers necessary or convenient to carry out and effectuate the purposes and provisions of urban renewal law. Among those powers, but without limitation, municipalities may make and execute contracts and other instruments necessary or convenient to urban renewal; it may arrange or contract for the furnishing of whatever services are necessary to accomplish urban renewal. It is given broad powers of inspection, survey,

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[2]*See also Mason City Center Associates v. City of Mason City,* 468 F. Supp. 737, 743 (N.D. Iowa 1979).

appraisal, and testing; it may acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise any real property necessary for the project; it may issue bonds or otherwise borrow sufficient finances to support the plan; it may relocate those displaced by the project; it may zone or rezone any part of the municipality or make exceptions from building regulations; it may sell and convey real property in furtherance of an urban renewal project and it can exercise all or any part or combination of powers granted in Section 403.6. Under Code of Iowa Section 403.8 entitled "Sale or Lease of Property," the municipality's power to effectuate transfers of real property is further elaborated. This section states that the municipality may execute such contract in accordance with the section and may deliver deeds, leases, and other instruments and *may take all steps necessary to effectuate such contract.* Again, in Code of Iowa Section 403.12, the municipality is given the power to do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal project, including the planning or replanning, zoning or rezoning of any part of the public body. Code of Iowa Section 403.18 also provides that insofar as the provisions of the urban renewal law may be inconsistent with the provisions of any other law, that the provisions of the urban renewal law shall be controlling.

The question, pursuant to *Lafayette,* is whether the legislature contemplated the anticompetitive activity alleged to have occurred when it adopted the urban renewal law. Again, it must be remembered that, contrary to the defendants' assertions, the plaintiffs are not complaining merely of a change in zoning. Plaintiffs complain of an alleged conspiracy to destroy businesses outside of the urban renewal area.[3]

[3]As part of this conspiracy theory, the plaintiffs contend that the urban renewal project was proceeding poorly. When General Growth presented a threat to further success of the project, the plaintiffs maintain that the developer had an agreement with the City to assure that the project would not have competition from other shopping areas. Thus, pursuant to that agreement, it was a foregone conclusion that plaintiffs' favorable zoning interests would be taken away.

It is beyond question that the City possessed extremely broad power under the urban renewal law. However, the *Boulder* case makes it clear that even the broadest of powers, in itself, will not sustain a grant of *Parker* immunity. The Court believes that, although the powers granted in the urban renewal law are more specific than the home rule amendment in *Boulder*, there is nothing in the urban renewal law that clearly articulates and affirmatively expresses a state policy authorizing anticompetitive activities. There is nothing about the power to make contracts, convey real estate or arrange for necessary city services that is inherently anticompetitive or that can be said to contemplate anticompetitive activities. Similarly, the powers of eminent domain and rezoning do not necessarily contemplate that these powers will be used in an anticompetitive manner. Rather, these powers are traditionally granted to promote the state's ordinary police powers, i.e., to protect health, safety, morals, etc. The rule of construction provided in Code of Iowa Section 403.18 is very similar to the Home Rule of Boulder and thus, does not materially aid defendants' argument.

This Court, having fully considered the Iowa urban renewal law, also cannot say that it is part of the state policy to displace competition with regulation or monopoly public service as required by *Lafayette, supra,* at p. 413. This factor most strongly distinguishes Chief Judge Stuart's opinion in *Central Iowa Refuse Systems v. Des Moines Metropolitan Area Solid Waste Agency,* No. 79-32-1 (S.D. Iowa 12/9/82), wherein he held that the state and federal law not only mandated that communities provide sanitary disposal facilities but actively encouraged the communities to join together and form a common facility for the disposal of solid waste.

Another factor distinguishing this case from *Central Iowa Refuse* is that the statutory scheme there envisioned that the Department of Environmental Quality and its executive director would maintain active supervision over the affairs of

the municipal agency. In the matter now before the Court, the defendants are unable to point to any supervision by the state itself and simply rely on their argument that the active supervision requirement is not necessary in cases involving municipal defendants. This Court has rejected that argument.

Two district court opinions on the issue of state action in urban renewal settings deserve attention. The defendants cite *Jonnet Development Corp. v. Caliguiri,* No. 81-421 (W.D.Pa. 1/25/83), wherein the plaintiff desired to purchase land within an urban renewal area for the purpose of building a hotel. The land was sold to the Urban Renewal Authority. When he was not allowed to purchase the land, he alleged a conspiracy among the seller of the land, the City of Pittsburgh, the Development Council, and others.

The district court dismissed for two reasons. First, the plaintiffs were unable to uncover any evidence whatsoever of a conspiratorial agreement. Second, the Court held that the state action immunity of *Parker* barred the action:

> The state action immunity of *Parker* is controlling and the City of Pittsburgh, Mayor's Development Council, the U.R.A., and their members, had the power to determine the area to be redeveloped, the plan for development, the use to which the [area] would be put, and the location and number of hotels in the area.

Jonnet, slip op. at p. 8. The obvious distinguishing factor between *Jonnet* and the matter now before the Court is the location of the property in dispute. *Jonnet* involved a location *within* the urban renewal area. Under Pennsylvania law, like Iowa law, the size and location of the area developed are affirmatively committed to the discretion of local officials. The issue then is whether the City has concurrent state-granted powers to dispose of property *outside* of the urban renewal area. This Court has held, *supra,* that it does not.

The second district court opinion is more closely analogous to the matter before this Court. In *Miracle Mile Associates v. City of Rochester,* 1979-2 Trade Cas. Para. 62,735 (W.D.N.Y. 1979), it was alleged that the plaintiffs were prevented from developing a shopping mall that competed with the urban renewal project. The defendants accomplished this objective by instituting (1) New York wetlands proceedings against the development, (2) environmental import assessment proceedings against the development, (3) federal water pollution control proceeding against the development, and (4) federal flood insurance proceedings against the town in which the development was situated.

The district court held that state action immunity and Noerr-Pennington exemption applied to these facts. Although the dismissal was affirmed on appeal, *Miracle Mile Associates v. City of Rochester,* 617 F.2d 18 (2d Cir. 1980), the Second Circuit Court of Appeals did not address the state action immunity question. The Court of Appeals simply held that the solicitation of governmental action through administrative agencies was anticompetitive activity protected by the First Amendment, citing *California Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508 (1972).

The district court in *Miracle Mile* did not address the issue of *Lafayette's* "active supervision" requirement, noted above. As stated, this Court believes that active supervision is a necessary element of *Parker* immunity and therefore distinguishes *Miracle Mile* on that basis.

In conclusion, the Court notes that the question presented here is a difficult and close one. However, this Court believes that although the urban renewal law grants municipalities broad power to accomplish the legitimate purposes of urban renewal, it does not clearly articulate and affirmatively express a "state policy" contemplating the type of anticompetitive activity that is alleged to have taken place in

Sioux City. Further, this Court does not believe that it is the policy of the urban renewal law to displace competition with regulation or monopoly public service but, rather, that the powers granted by the urban renewal law are consistent with the maintenance of competition in the community. Finally, the Court finds no active supervision by the state itself in these matters.

The Court has fully considered the defendants' motion for a change of venue transferring this case to the Southern District of Iowa for trial. The Court is sympathetic to the legitimate concern of the defendants that they not draw jurors who are overly familiar with the facts of this case or are disenchanted with this City's efforts in the area of urban renewal. However, the Court believes that these concerns may be reasonably accommodated without disrupting the orderly process of this trial that would accompany a requirement that all witnesses travel from Sioux City to Des Moines. It appears to the Court that this matter can be handled as a part of jury selection as opposed to forum selection and, unless strenuously objected to by the plaintiffs, the Court will not summon any jurors from Woodbury County (Sioux City) or any adjoining county.

Upon the foregoing,

IT IS THEREFORE ORDERED that the defendants' motion for summary judgment is hereby denied.

IT IS FURTHER ORDERED that the defendants' motion for a change of venue is hereby denied.

May 3, 1983.

Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT

Copies mailed by regular mail on May 3, 1983 to: Vohs, Bikakis, Heubaum, 340 Ins. Exch. Bldg., Sioux City, Iowa 51101. Legal Dept., City of SC, Patrick Nugent, Box 447, Sioux City,

Ia. 51102. Lance A. Coppock, Edward W. Remsburg, 300 Liberty Bldg., Des Moines, Ia. Timothy W. Shuminsky, 224 Davidson Bldg., Sioux City, Iowa 51101.

Deputy Clerk

APPENDIX D

Amend. 5

CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amend. 14

CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CIVIL RIGHTS ACT

§ 1983. **42 U.S.C. § 1983**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

SHERMAN ACT

§ 1. **15 U.S.C. §§ 1, 2**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a

misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 2.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

CHAPTER 403

URBAN RENEWAL LAW

Referred to in §384.24, 419.17
Applicable to all cities
Allocation of funds in urban revitalization areas, 68GA, ch 84, §11

403.1 Title.
403.2 Declaration of policy.
403.3 Municipal program.
403.4 Resolution of necessity.
403.5 Urban renewal plan.
403.6 Powers of municipality.
403.7 Condemnation of property.
403.8 Sale or lease of property.
403.9 Issuance of bonds.
403.10 Bonds as legal investment.
403.11 Exemptions from legal process.
403.12 Powers of municipality.
403.13 Presumption of title.
403.14 Urban renewal agency powers.

403.15 Agency created.
403.16 Personal interest prohibited.
403.17 Definitions.
403.18 Rule of construction.
403.19 Division of revenue from taxation.
403.20 Percentage of adjustment considered in value assessment.

403.1 Title. This chapter shall be known and may be cited as the "urban renewal law." [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.1]

403.2 Declaration of policy.

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency and consume an excessive proportion of state revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

2. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as pro-

vided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation' that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that fringe areas can be conserved and rehabilitated through appropriate public action as herein authorized, and through the co-operation and voluntary action of the owners and tenants of property in such areas.

3. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.2]

403.3 Municipal program. The local governing body of a municipality may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate slums and prevent the development or spread of slums and urban blight and to encourage needed urban rehabilitation. Such workable program may include, without limitation, provisions for:

1. The prevention of the spread of blight into areas of the municipality which are free from blight, through diligent enforcement of housing, zoning and occupancy controls and standards.

2. The rehabilitation or conservation of slum or blighted areas or portions thereof by replanning, by removing congestion, by providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures.

3. The clearance of slum and blighted areas or portions thereof.

4. The redevelopment of slum and blighted areas by approval of urban renewal plans. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.3]

Referred to in §403.14(2,*d*)

403.4 Resolution of necessity. No municipality shall exercise the authority herein conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that:

1. One or more slum or blighted areas exist in such municipality.

2. The rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.4]

Referred to in §403.14(2, *e*), 403.15(1)

403.5 Urban renewal plan.

1. A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined such area to be a slum area or a blighted area or a combination thereof, and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to the environs and metropolitan surroundings. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection 4 hereof.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan; or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then, without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection 3 hereof.

3. The local governing body shall hold a public hearing on an urban renewal project after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

4. Following such hearing, the local governing body may approve an urban renewal project if it finds that:

a. A feasible method exists for the location of families who will be displaced from the urban renewal area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b. The urban renewal plan conforms to the general plan of the municipality as a whole; provided, that if the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired except:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design with decency, safety and sanitation exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality.

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives. The acquisition may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

Referred to in §403.14(2, *e*), 403.17(9)

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable, and in any event such modification shall

be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

6. Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the municipality may then cause such plan or modification to be carried out in accordance with is terms.

7. Notwithstanding any other provisions of this chapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, [64 Stat. L. 1109; 42 U.S.C. §1855-1855g] or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection 4 of this section and without regard to provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.5]

Referred to in §403.14(2, *e*), 403.17[9, 12(*a*)]

403.6 Powers of municipality. Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate slum clearance and urban renewal information.

2. To arrange or contract for the furnishing or repair by any person of services, privileges, works, streets, roads, public

utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions, that it may deem reasonable and appropriate, attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project; and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state.

4. To invest any urban renewal project funds held in reserves or sinking funds, or any such funds not required for immediate disbursement, in property or securities in which a state bank may legally invest funds subject to its control; to

redeem such bonds as have been issued pursuant to section 403.9 at the redemption price established therein, or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

5. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required, and to enter into and carry out contracts in connection therewith. A municipality may include in any contract, for financial assistance with the federal government for an urban renewal project, such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of the chapter.

6. Within its area of operation, to make or have made all surveys and planning necessary to the carrying out of the purposes of this chapter, and to contract with any person in making and carrying out of such planning, and to adopt or approve, modify and amend such planning. Such planning may include, without limitation:

a. A general plan for the locality as a whole;

b. Urban renewal plans;

c. Preliminary plans outlining urban renewal activities for neighborhoods to embrace two or more urban renewal areas;

d. Planning for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

e. Planning for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;

f. Appraisals, title searches, surveys, studies, and other planning and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and to apply for, accept and utilize grants of funds from the federal government for such purposes.

7. To plan for the relocation of persons, including families, business concerns and others, displaced by an urban renewal project, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

8. To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements, respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter, with an urban renewal agency vested with urban renewal project powers under section 403.14, which agreements may extend over any period, notwithstanding any provision of rule of law to the contrary.

Referred to in §403.14(2 *f*)

9.To close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the municipality.

10. Within its area of operation, to organize, coordinate and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying slum and blighted areas, and preventing the causes thereof, within such municipality, may be most effec-

tively promoted and achieved; and to establish such new office or offices of the municipality, or to reorganize existing offices, in order to carry out such purpose most effectively.

11. To exercise all or any part of combination of powers herein granted.

12. To approve urban renewal plans.

13. To sell and convey real property in furtherance of an urban renewal project.

14. To supplement the rent required to be paid by any family residing in the municipality forced to relocate by reason of any governmental activity, provided it is necessary to do so in order to house such family in decent, safe and sanitary housing and provided further that such family does not have sufficient means, as determined by the municipality, to pay the required rent for such housing. Any such rent supplement for any such family shall not continue for more than five years.

15. To acquire by purchase, gift or condemnation real property within its area of operation for the relocation of railroad passenger and freight depots, tracks, and yard and other railroad facilities and to sell or exchange and convey such real property to railroads.

16. To acquire or dispose of by purchase, construction, or lease, or otherwise to deal in air rights, and facilities or easements for lateral or vertical support of land or structures of any kind. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.6]

Referred to in §403.14(2, *g*)

403.7 Condemnation of property. A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in chapter 472, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any

other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner. Provided, that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent, provided further that no real property or any right or interest therein owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall be acquired without the consent of such company, or without first securing, after due notice to such company and after hearing, a certificate authorizing condemnation of such property from the board, commission or body having the authority to grant a certificate authorizing condemnation. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.7]

403.8 Sale or lease of property.

1. A municipality may sell, lease or otherwise transfer real property or any interest therein acquired by it, and may enter into contracts for such purposes, in an urban renewal area for residential, recreational, commercial, industrial or other uses, or for public use, subject to such covenants, conditions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, or to otherwise carry out the purposes of this chapter. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and they may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban

renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to: The uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property, without the prior written consent of the municipality, until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer under the urban renewal plan, or such part or parts of such contract or plan as the municipality may determine, may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

2. A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe, or as hereinafter provided in this subsection. A municipality, by public notice by publication in a newspaper having a general circulation in the community, thirty days prior to the execution of any contract to sell, lease or otherwise transfer real property, and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, may invite proposals from and make available all

pertinent information to any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within thirty days after the date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals, and the financial and legal ability of the persons making such proposals to carry them out, and the municipality may negotiate with any persons for proposals concerning the purchase, lease or other transfer of any real property acquired by the municipality in the urban renewal area. The municipality may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter: Provided, that a notification of intention to accept such proposal shall be filed with the governing body not less than thirty days prior to any such acceptance. Thereafter, the municipality may execute such contract in accordance with the provisions of subsection 1 of this section and may deliver deeds, leases and other instruments and may take all steps necessary to effectuate such contract.

3. A municipality may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property as authorized in this chapter, without regard to the provisions of subsection 1 above, for such uses and purposes as may be deemed desirable, even though not in conformity with the urban renewal plan. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.8]

See ch 403A

403.9 Issuance of bonds.

1. A municipality shall have power to periodically issue bonds in its discretion to pay the costs of carrying out the purposes and provisions of this chapter, including, but not

limited to, the payment of principal and interest upon any advances for surveys and planning, and the payment of interest on bonds, herein authorized, not to exceed three years from the date the bonds are issued. The municipality shall have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Said bonds shall be payable solely from the income and proceeds of the fund and portion of taxes referred to in subsection 2 of section 403.19, and revenues and other funds of the municipality derived from or held in connection with the undertaking and carrying out of urban renewal projects under this chapter. The municipality may pledge to the payment of the bonds the fund and portion of taxes referred to in subsection 2 of section 403.19, and may further secure the bonds by a pledge of any loan, grant or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this chapter, or by a mortgage of any such urban renewal projects, or any part thereof, title which is vested in the municipality.

2. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

3. Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding that permitted by chapter 74A be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such

rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

4. Such bonds may be sold at not less than par at public or private sale, or may be exchanged for other bonds on the basis of par.

5. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

6. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.9]

Referred to in §403.6(4), 403.12(5), 403.19

403.10 Bonds as legal investment. All banks, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on an investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within

their control in any bonds or other obligations issued by a municipality pursuant to this chapter, or those issued by any urban renewal agency vested with urban renewal project powers under section 403.14: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government, in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations, will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.10]

403.11 Exemptions from legal process.

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution; and no execution or other judicial process shall issue against the same; nor shall judgment against a municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees,

grants or revenues from urban renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.11]

403.12 Powers of municipality.

1. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

a. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or other rights or privileges therein to a municipality;

b. Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

c. Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal project;

d. Lend, grant or contribute funds to a municipality;

e. Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban renewal project;

f. Cause public buildings and public facilities, including parks, playgrounds, and recreational, community, educational, water, sewer or drainage facilities, or any other works

which it is otherwise empowered to undertake to be furnished;

g. Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places;

h. Plan or replan, zone or rezone any part of the public body or make exceptions from building regulations;

i. Cause administrative and other services to be furnished to the municipality.

2. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, including any agency or instrumentality of the United States, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency vested with all of the urban renewal project powers pursuant to the provisions of section 403.14.

3. Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

4. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency, a municipality may, in addition to its other powers and upon such terms, with or without consideration, as it may determine, do and perform any or all of the actions or things which, by the provisions of subsection 1 of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

5. For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, the municipality may, in addition to any authority to issue bonds pursuant to section 403.9, issue and sell its general obligation bonds. Any bonds

issued by a municipality pursuant to this section must be issued by resolution of the council in the manner and within the limitations prescribed by chapter 408A.* Bonds issued pursuant to the provisions of this subsection must be sold in the manner prescribed by chapter 75. The power granted in this subsection for the financing of public improvements within an urban renewal project shall not be construed as a limitation of the existing powers of cities. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.12]

Referred to in §384.24

*Repealed 64GA, ch 1088, §199, effective July 1, 1975

403.13 Presumption of title. Any instrument executed by a municipality and purporting to convey any right, title or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.13]

403.14 Urban renewal agency powers.

1. A municipality may itself exercise its urban renewal project powers, as herein defined, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the urban renewal agency shall be vested with all of the urban renewal project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its urban renewal project powers through a board or commissioner, or through such officers of the municipality as the local governing body may by resolution determine.

2. As used in this section, the term "urban renewal project powers" shall include the rights, powers, functions and duties of a municipality under this chapter, except the following:

a. The power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project and to hold any public hearings required with respect thereto;

b. The power to approve urban renewal plans and modifications thereof;

c. The power to establish a general plan for the locality as a whole;

d. The power to formulate a workable program under section 403.3;

e. The power to make the determinations and findings provided for in section 403.4, and section 403.5, subsection 4;

f. The power to issue general obligation bonds;

g. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in section 403.6, subsection 8. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.14]

Referred to in §403.6(8), 403.10, 403.12(2), 403.15(1), 403.16

403.15 Agency created.

1. There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding perscribed in section 403.4, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 403.14.

2. If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which board shall consist of five commissioners. The

term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

4. The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be conterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

5. The mayor shall designate a chairman and vice chairman from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall

publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

6. For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed only after a hearing, and after he shall have been given a copy of the charges at least ten days prior to such hearing, and after he shall have had an opportunity to be heard in person or by counsel. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.15]

Referred to in §403.17(1)

403.16 Personal interest prohibited. No public official or employee of a municipality, or board or commission thereof, and no commissioner or employee of an urban renewal agency, which has been vested by a municipality with urban renewal project powers under section 403.14, shall voluntarily acquire any personal interest, as hereinafter defined, whether direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, as hereinafter defined, whether direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commis-

sion thereof, or urban renewal agency affecting such property, as the terms of such proscription are hereinafter defined. For the purposes of this section the following definitions and standards of construction shall apply:

1. "Action affecting such property" shall include only that action directly and specifically affecting such property as a separate property but shall not include any action, any benefits of which accrue to the public generally, or which affects all or a substantial portion of the properties included or planned to be included in such a project.

2. Employment by a public body, its agencies, or institutions or by any other person having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of his employer. Such an employee may participate in an urban renewal project so long as any benefits of such participation accrue to the public generally, such participation affects all or a substantial portion of the properties included or planned to be included in such a project, or such participation promotes the public purposes of such project, and shall limit only that participation by an employee which directly or specifically affects property in which an employer of an employee has an interest.

3. The word "participation" shall be deemed not to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

4. The designation of a bank or trust company as depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

5. Stock ownership in a corporation having such an interest shall not be deemed an indicia of an interest or of ownership or control by the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

6. The word "action" shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory approving or recommending function under this chapter.

7. The limitations of this section shall be construed to permit action by a public official, commissioner, or employee where any benefits of such action accrue to the public generally, such action affects all or a substantial portion of the properties included or planned to be included in such a project, or such action promotes the public purposes of such project, and shall be construed to limit only that action by a public official, commissioner, or employee which directly or specifically affects property in which such official, commissioner, or employee has an interest or in which an employer of such official, commissioner, or employee has an interest. Any disclosure required to be made by this section to the local governing body shall concurrently be made to an urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 403.14. No commissioner or other officer of any urban renewal agency, board or commission exercising powers pursuant to this chapter shall hold any other public office under the municipality, other than his commissionership or office with respect to such urban renewal agency, board or commission. Any violation of the provisions of this section shall constitute misconduct in office, but no ordinance or resolution of a municipality or agency shall be invalid by reason of a vote or votes cast in violation of the standards of this section unless such vote or votes were decisive in the passage of such ordinance or resolution. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.16]

Prior actions legalized on condition, 63GA, ch 238, §1

Similar provisions, §18.5, 68B.3, 86.7, 262.10, 314.2, 331.342, 347.15, 403A.22, 721.11

403.17 Definitions. The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. *"Agency"* or *"urban renewal agency"* shall mean a public agency created by section 403.15.

2. *"Municipality"* shall mean any city in the state.

3. *"Public body"* shall mean the state or any political subdivision thereof.

4. *"Local governing body"* shall mean the council or other legislative body charged with governing the municipality.

5. *"Mayor"* shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.

6. *"Clerk"* shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

7. *"Federal government"* shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

8. *"Slum area"* shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: By reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision of ventilation, light, air, sanitation, or open spaces; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and which is detrimental to the public health, safety, morals or welfare.

9. *"Blighted area"* shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, ad-

equacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: Provided, that if such blighted area consists of open land, the conditions contained in the proviso in section 403.5, subsection 4, shall apply: And provided further, that any disaster area referred to in section 403.5, subsection 7, shall constitute a "blighted area".

10. *"Urban renewal project"* may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. Such undertakings and activities may include:

a. Acquisition of a slum area or a blighted area or portion thereof;

b. Demolition and removal of buildings and improvements;

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;

e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

g. Sale and conveyance of real property in furtherance of an urban renewal project.

11. *"Urban renewal area"* means a slum area or a blighted area, or a combination thereof, which the local governing body designates as appropriate for an urban renewal project.

12. *"Urban renewal plan"* means a plan, as it exists from time to time, for an urban renewal project. The plan shall:

a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7;

b. Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, and to indicate zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plans relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

13. *"Real property"* shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

14. *"Bonds"* shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

15. *"Obligee"* shall include any bondholder, agents or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

16. *"Person"* shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

17. *"Area of operation"* shall mean the area within the corporate limits of the municipality and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution shall have been adopted by the governing body of such other city declaring a need therefor.

18. *"Board"* or *"commission"* shall mean a board, commission, department, division, office, body or other unit of the municipality.

19. *"Public officer"* shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.17]

Referred to in §403A.22

403.18 Rule of construction. Insofar as the provisions of this chapter may be inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.18]

Constitutionality, 57GA, ch 197, §18

403.19 Division of revenue from taxation. A municipality may provide by ordinance that taxes levied on taxable property in an urban renewal project each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of such ordinance, shall be divided as follows:

1. That portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the urban renewal project, as shown on the assessment roll used in connection with the taxation of property by the taxing district, last equalized prior to the effective date of the ordinance, or the assessment roll last equalized prior to the date of initial adoption of the urban renewal plan in the case of projects commenced prior to July 1, 1972, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for said taxing district into which all other property taxes are paid. For the purpose of allocating taxes levied by or for any taxing district which did not include the territory in an urban renewal project on the effective date of the ordinance or initial adoption of the plan, but to which the territory has been annexed or otherwise included after the effective date, the assessment roll of the county last equalized as the effective date of the ordinance or initial adoption of the plan shall be used in determining the assessed valuation of the taxable property in the project on the effective date.

2. That portion of the taxes each year in excess of such amount shall be allocated to and when collected be paid into a special fund of the municipality to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds issued under the authority of section 403.9, subsection 1, incurred by the municipality to finance or refinance, in whole or in part, the redevelopment project, except that taxes for the payment of bonds and interest of each taxing district

must be collected against all taxable property within the taxing district without limitation by the provisions of this subsection. Unless and until the total assessed valuation of the taxable property in an urban renewal project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subsection 1 of this section, all of the taxes levied and collected upon the taxable property in the urban renewal project shall be paid into the funds for the respective taxing districts as taxes by or for said taxing districts in the same manner as all other property taxes. When such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal project shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

3. The portion of taxes mentioned in subsection 2 of this section and the special fund into which they shall be paid, may be irrevocably pledged by a municipality for the payment of the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness, incurred by a municipality to finance or refinance, in whole or in part, the urban renewal project.

4. As used in this section the word "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

5. A city shall certify to the county auditor the amount of loans, advances, indebtedness or bonds which qualify for payment from the special fund referred to in subsection 2. In any year, the county auditor shall, upon receipt of a certified request from a city filed prior to the date for certification of city taxes specified in section 384.2, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the city does not request allocation to the special fund of the full portion of taxes which could be col-

lected. [C71, 73, 75, 77, 79, 81, §403.19]

Referred to in §403.9, 403.20

403.20 Percentage of adjustment considered in value assessment. In determining the assessed value of property within an urban renewal area which is subject to a division of tax revenues pursuant to section 403.19, the difference between the actual value of the property as determined by the assessor each year and the percentage of adjustment certified for that year by the director of revenue on or before November 1 pursuant to section 441.21, subsection 12, multiplied by the actual value of the property as determined by the assessor, shall be subtracted from the actual value of the property as determined pursuant to section 403.19, subsection 1. If the assessed value of the property as determined pursuant to section 403.19, subsection 1, is reduced to zero, the additional valuation reduction shall be subtracted from the actual value of the property as determined by the assessor. [C81,§403.20]

See 68GA, ch 1136, §10, effective from February 23, 1980, to June 30, 1980, which was repealed by 68GA, ch 1128, §3

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No. 84-360

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GENE P. SCOTT, JOYCE A. SCOTT, ARNOLD W. MADSEN, MARY G. MADSEN, JOHN A. CONNOLLY AND FRANK FITCH, as Trustees of John L. Connolly Trust,
Petitioners,

vs.

THE CITY OF SIOUX CITY, IOWA, METRO-CENTER, INC., GEORGE COLE, MARGARET PRAHL, WILLIAM GROSS, LOREN CALENDAR, THOMAS LINDBLOM, DONALD L. LAWRENSON, LARRY CLAUSEN, and JAN ALBERTSON,
Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. IT IS NOT THE PURPOSE OF A WRIT OF CERTIORARI TO CANVASS FACUTAL FINDINGS OF THE RECORD BELOW WHICH PROPERLY ESTABLISHES THAT NO CAUSE OF ACTION EXISTS.

II. THE IOWA URBAN RENEWAL LAW IS A CLEARLY ARTICULATED AND AFFIRMATIVELY EXPRESSED POLICY OF THE IOWA STATE LEGISLATURE AND THE EIGHTH CIRCUIT OPINION IS FIRMLY BASED UPON THIS COURTS DECISIONS.

III. THE PROPOSITION THAT MUNICIPALITIES ENGAGED IN ACTIVITIES EXPRESSLY AUTHORIZED BY THE STATE NEED NOT BE "ACTIVELY SUPERVISED" IS APPLIED UNIFORMLY THROUGHOUT THE FEDERAL CIRCUIT COURTS.

IV. THE LEGAL ISSUES EMBODIED IN THIS CASE ARE PRESENTLY BEFORE THIS COURT IN TOWN OF HALLIE V. CITY OF EAU CLAIRE AND THE ULTIMATE OUTCOME OF THIS CASE WOULD BE UNCHANGED NOTWITHSTANDING A DETERMINATION OF THAT CASE SINCE AVAILABLE REMEDIES WERE NOT EXHAUSTED BY PETITIONER AND A CAUSE OF ACTION WAS NOT PLEAD.

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No. 84-360

IN THE

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OCTOBER TERM, 1984

GENE P. SCOTT, JOYCE A. SCOTT, ARNOLD W. MADSEN, MARY G. MADSEN, JOHN A. CONNOLLY AND FRANK FITCH, as Trustees of John L. Connolly Trust,

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THE CITY OF SIOUX CITY, IOWA, METRO-CENTER, INC., GEORGE COLE, MARGARET PRAHL, WILLIAM GROSS, LOREN CALENDAR, THOMAS LINDBLOM, DONALD L. LAWRENSON, LARRY CLAUSEN, and JAN ALBERTSON,

Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

The Respondents, City of Sioux City, Iowa and City Council Members, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Eighth Circuit's opinion in this case. That opinion is reported at 736 F.2d 1207 (8th Cir. 1984) (Copy attached as appendix to this brief). The unreported district court opinions which form the basis of the appeal appear as Appendices B and C to the petition for writ of certiorari.

JURISDICTION

The judgment and opinion of the United States District Court for the Northern District of Iowa, Western Division, was filed on June 17, 1983. Notice of appeal was filed in the United States District Court for the Northern District of Iowa, Western Division, appealing the decision of the district court to the United States Court of Appeals for the Eighth Circuit. The opinion of the United States Court of Appeals for the Eighth Circuit was filed on June 8, 1984. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1, 2); the Civil Rights Act (42 U.S.C. § 1983); and Chapter 403 of the Code of Iowa (1983).

STATEMENT OF THE CASE

The reported decision of the Eighth Circuit Court of appeals accurately and correctly sets out the facts and issues in this case. The matter was decided by the District Court and reviewed by the Court Of Appeals based upon a complete record. Discovery has been completed, all material issues or facts have been the subject of deposition testimony or addressed by affidavits or exhibits agreed to by the parties in the proposed pretrial order.

The Petitioners, in their brief below, and in their petition to this Court make frequent argumentative and inflammatory references to matters both within and outside the record and seek to reargue the evidence to this Court.[1] Judge Heaney

---

[1] As an example, Petitioners would have this Court believe that "nowhere in the purported findings (of the temporary zoning ordinance enacted to permit orderly City development) is there a mention of urban renewal." This is a fundamental misstatement of fact and the record. The ordinance which is a part of the record, includes the following specific finding of fact and legislative intent:

carefully analyzed the facts and the record in the Eighth Circuit opinion and found no basis for the Petitioners' inflammatory statements. The City did not concede as Petitioners would have this Court believe, that a conspiracy took place; that there was any intent to monopolize or restrain trade; that it did anything wrong or that the law was violated in any way. Indeed, the trial court and the Court of Appeals found absolutely no basis in the record for an antitrust trial.

(vii) That it is in the public interest to strengthen and expand and intensify existing areas of commercial development and to *prevent further blight and deterioration in furtherance of the established goals* and objectives of past and present City Councils and various representative and advisory bodies as expressed in Council resolutions and in public hearings; to prevent underutilization of existing commercial areas and the considerable public investment in place to serve said areas with necessary basic support services such as utilities, adequate parking, safe and convenient public transportation, streets and highways; *to preserve and protect extensive urban renewal efforts, involving massive public investment already underway,* and the reliance upon these investments by the private sector. Sioux City, Iowa, Municipal Code Section 20.05.020 (Ordinance amending Title 20 passed July 22, 1974).

REASONS WHY THE WRIT SHOULD BE DENIED

I.

Petitioners would have this Court reinterpret evidence and factual findings. Indeed, Petitioners would have this Court make a third review of the record to uncover what the trial court and the Court of Appeals could not; proof of conspiracy and proof of an intent to monopolize. Such a canvassing of the facts is not the purpose of a writ of certiorari. *United States v. Johnson,* 268 U.S. 220, 227 (1925). The decision below was accurate, correct and fair. The rulings and analysis by Judge Heaney are entitled to great weight by this Court.

II.

The Eighth Circuit has repeatedly faced the issues surrounding the scope and application of the federal antitrust laws to the activities of municipalities acting in the capacity of political subdivisions of a sovereign state. *Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency,* 715 F.2d 419 (8th Cir.), *petition for cert. filed,* 52 U.S.L.W. 3441 (U.S. Nov. 18, 1983) (No. 83-825); *Gold Cross Ambulance & Transfer v. City of Kansas City,* 705 F.2d 1005 (8th Cir.) *petition for cert. filed,* 52 U.S.L.W. 3039 (U.S. July 25, 1983) (No. 83-138); *Scott v. City of Sioux City, Iowa,* 736 F.2d 1207 (8th Cir.) *petition for cert. filed,* 53 U.S.L.W. 3189 (U.S. Sept. 5, 1984) (No. 84-360). In so doing, the careful analytical approach which has developed with regard to the availability of immunity from Sherman Act claims has produced well-reasoned results premised solidly upon the holdings of this Court.

The analysis employed by the Eighth Circuit, based fundamentally upon this Court's decisions in *Parker v. Brown,* 317 U.S. 341 (1943), *City of Lafayette v. Louisiana Power & Light Co.,* 435 U.S. 389 (1978), and *Community Communications Co. v. City of Boulder,* 455 U.S. 40 (1982), conditions the

availability of immunity from federal antitrust actions upon two concurrent findings. First, the activities complained of must have been in furtherance of a clearly articulated and affirmatively expressed policy of the state legislature. *Scott v. City of Sioux City*, 736 F.2d at 1211 (citing *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. at 415). Second, this legislative policy must exhibit an intent, either express or implied, that the activities may displace competition. *Scott v. City of Sioux City*, 736 F.2d at 1211 (citing *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. at 415).

This Court has held that a literal expression of intent to displace competition is not required, but may be inferred if the challenged restraint is a necessary or reasonable consequence of engaging in the activities which have been authorized by the state. *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. at 415.

In the context of this case, Iowa Code Chapter 403 (1983), the Iowa Urban Renewal Law, represents as strong a legislative public policy as can be found anywhere in the Iowa statutes. Iowa municipalities are granted broad powers of both a general and specific nature including the power to zone or rezone any part of the public body, enter into contracts with private parties for redevelopment, to finance the comprehensive redevelopment of the City with public monies, and to do all things necessary or convenient to carry out and effectuate the purposes of urban renewal.

The Eighth Circuit found strong evidence in the statute that the Iowa legislature intended or contemplated all actions of the City and its Council in this case. The Eighth Circuit found:

> [T]hat the importance the Iowa legislature placed on urban renewal, and the broad powers it gave to municipalities to address the problem, support a finding that the legislature contemplated the type of zoning ordinances passed by Sioux City. . . The legislature's deep concern and broad

delegation of power contributes to our finding that it contemplated the challenged zoning.

* * *

A more compelling reason to find the necessary legislative intent, however, is that the legislature has put municipalities in the position of partially financing commercial development. The Iowa Urban Renewal Law allows cities to raise a substantial amount of money for their urban renewal ventures through federal and local government loans, tax levies and the issuance of bonds. [citations omitted] The District Court found Sioux City had raised approximately $30 million in public financing to support its urban renewal project.

* * *

[T]he state legislature must have anticipated that once a municipality became financially and legally committed to commercial development in urban areas, it would use its delegated powers, including the power to zone and rezone, to protect that commitment. . . . The challenged ordinances were thus a reasonable and necessary consequence of the city's role in implementing state urban renewal goals. *Scott v. City of Sioux City,* 736 F.2d at 1213-14.

The Eighth Circuit was clearly correct in this case. The decision is based upon a clear reading of this Court's decisions and no error was committed which presents a sufficient basis for the granting of a writ of certiorari.

III.

The Circuit Courts have consistently held that active state supervision of municipal activities is not required to invoke the protection of *Parker* immunity. This position is a proper interpretation of this Court's holdings requiring active state supervi-

sion only in those cases where state action immunity has been extended to private entities or individuals. *California Retail Liquor Dealer's Association v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980); *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976). The cases in which active state supervision has been required as a condition for *Parker* immunity do not parallel the instant case because the challenged anticompetitive activity in those cases was that of *private* parties and not of duly formed and empowered political subdivisions of a state. This is a critical distinction previously made by this Court and one which goes to the heart of the purpose and logic of the *Parker* immunity doctrine. Political subdivisions which have been granted the power by the state to act in its behalf are, in essence, acting as the state itself. Neither this Court nor any Circuit Court has required such entities to be actively supervised by the state. If a municipality's activities are taken pursuant to a clearly articulated and affirmatively expressed state policy, the state's power has been delegated and the subdivision is entitled to immunity. The Eighth Circuit stated the distinction as follows:

> Unlike private parties, municipal officials are accountable for their decisions to the citizens they represent. State supervision is therefore less necessary to prevent abuse of power. Moreover, while the state authorization requirement for municipal decisions tests whether the challenged local activity is truly state action, the state supervision requirements serves that function for private conduct. *Scott v. City of Sioux City*, 736 F.2d at 1214. (quoting *Gold Cross Ambulance & Transfer v. City of Kansas City*, 705 F.2d 1005, 1014 (8th Cir. 1983).

Contrary to petitioners' assertions, the position of the Eighth Circuit on the active state supervision issue is perfectly consistent with the result reached by all of the Circuit Courts which have confronted the issue. Petitioners point to a line of decisions announced by the Ninth Circuit. *See, e.g. Miller v. Oregan Liquor Control Commission*, 688 F.2d 1222 (9th Cir.

1982); *Knudsen Corp. v. Nevada State Dairy Commission,* 676 F.2d 374 (9th Cir. 1982); *Benson v. Arizona State Board of Dental Examiners,* 673 F.2d 272 (9th Cir. 1982); and *Turf Paradise, Inc. v. Arizona Downs,* 670 F.2d 813 (9th Cir. 1982), *cert. denied* 102 S.Ct. 2308 (1982). An examination of these cases reveals that the activities challenged as anticompetitive were the activities of private commercial interests. In this context, active state supervision may be required to monitor private economic decisions. *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.,* 445 U.S. 97 (1980). Such active supervision is not required by the teachings of this Court when the decision-making power in question has been expressly delegated to a political subdivision created by the state for the purpose of carrying out important health and welfare policy objectives specifically articulated by the legislative body.

It is impossible as Petitioners argue, to focus upon the nature of the challenged activity apart from the identity of the parties to the suit and this Court has never done so. This separation is impossible because it is precisely the source of power from which municipalities derive their authority to act which legitimizes their conduct and shields them from antitrust liability under *Parker v. Brown,* 317 U.S. 341 (1943).

The Ninth Circuit cases cited by Petitioners do not represent a conflict with the Eighth Circuit or any other circuit on the issue of active state supervision of municipal affairs. Every circuit court which has faced the question of active state supervision of action by municipal officials has held that the state action doctrine did not require the state to actively supervise the challenged restraint. The Eighth Circuit has properly applied this Court's precedents to the actions of political subdivisions performing pursuant to policy articulated by the state. The soundness of this approach is borne out by its parallel application throughout the federal circuit courts and does not constitute a basis upon which to grant a writ of certiorari. There is no conflict among the Circuits.

IV.

The primary legal issues which the Petitioners seek this Court to review were addressed by Judge Minor Wisdom in *Town of Hallie v. City of Eau Claire,* 700 F.2d 376 (7th Cir. 1983), *cert. granted* 52 U.S.L.W. 3885 (June 12, 1984). The legal issues raised here: (1) affirmative expression and clear articulation of state policy, (2) active state supervision. (3) the legal significance of traditional versus nontraditional govenmental function, are all before this Court in *Town of Hallie.* That case presents a clear opportunity for this Court to decide those issues.

The writ in this case should be denied and such denial need not and should not await this Court's decision in *Town of Hallie.* In the case before the Court here, Judge Heaney found that the plaintiffs' broadly worded complaint made no allegation of actions which were outside the ambit of the City's statutory authority. *Scott v. City of Sioux City,* 736 F.2d at 1215. The Court further found that the mere label "conspiracy" was not enough and that a trial was not warranted since there were no allegations of bribery or other illegal acts. *Id.* at 1215. Indeed, the Court of Appeals held that:

> In sum, we do not believe a material issue of fact exists as to whether the City acted outside the state's authorization . . . *Id.* at 1216.

Significantly, the Court found that the administrative procedures available within the City government in order to seek a change in zoning had not been exhausted by these Petitioners. *Id.* at 1209, 1217; *see also* nn. 12-14 at p. 1217.[2] These findings by the Court of Appeals are entitled to great weight by this Court.

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[2] "Scott never applied for a building permit or variance under either the interim ordinance or the permanent ordinance enacted by the City Council on August 2, 1976" *Scott v. City of Sioux City,* 736 F.2d at 1209.

The Court of Appeals carefully reviewed the record and this Court's holdings with respect to all of the claims and easily found that the conclusory complaint presented no cause of action.[3] The action which Petitioners seek this Court to take with respect to the constitutional claims would again involve only questions of evidence applied under familiar legal principles. Such is not the proper scope of a writ of certiorari. *Rice v. Sioux City Memorial Park Cemetary,* 349 U.S. 70 (1955).

The Eighth Circuit has recognized in this case that cavalier allegations of conspiracy—conclusory in nature—with no basis to substantiate abuse, have a chilling effect on the ability of municipal government to undertake legitimate public purpose goals. The City of Sioux City has spent countless hours and substantial public funds in defending this lawsuit since it was filed in January of 1979. The opinion of the court below is careful and the result is fair. The legal issues of national importance will be decided in *Town of Hallie v. City of Eau Claire,* 700 F.2d 376 (7th Cir. 1983), *cert. granted* 52 U.S.L.W. 3885 (June 12, 1984). The Eighth Circuit correctly and fairly decided this case; a third review here would turn upon the specific facts of the case, not clear legal principles. This is not a proper case for certiorari. The long-standing threat of treble damages which this unfounded lawsuit has placed upon Sioux City, Iowa, and its citizens should now end.

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[3] The Petitioners' constitutional claims were properly found to be meritless apart from the antitrust component of their complaint. The ordinances which were designed to accomplish the objectives of urban renewal were within the City's power and were rationally related to this permissible goal. Beyond this, the Petitioners' claims of denial of a substantive and procedural due process could not successfully challenge such a valid ordinance. Furthermore, the claim of a taking without just compensation has long been held to be insufficient when based only upon a diminution of the market value of the real estate. *Scott v. City of Sioux City,* 736 F.2d at 1217.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1934

Gene P. Scott, Joyce A. Scott, Arnold W. Madsen, Mary G. Madsen, John A. Connolly, Frank Fitch, As Trustees of the John L. Connolly Trust,

Appellants,

v.

City of Sioux City, Iowa, Metro-Center, Inc., George Cole, Margaret Prahl, William Gross, Loren Callendar, Thomas Lindblom, Donald L. Lawrenson, Larry Clausen and Jan Albertson,

Appellees.

Submitted Feb. 14, 1984
Decided June 8, 1984

Before LAY, Chief Judge, and HEANEY and BOWMAN, Circuit Judges.

HEANEY, Circuit Judge.

The appellants, owners of land near the southern city limits of Sioux City, Iowa, challenged the district court's grant of summary judgment to the defendant city and its council members in their action under the federal antitrust law, 15 U.S.C. §§ 1 and 2; the Civil Rights Act, 42 U.S.C. § 1983; and the Iowa Competition Law, Iowa Code Ann. § 553.4 (West.Supp.1983). The city council passed zoning ordinances which allegedly prevented the appellants from commercially developing their land on the city's periphery. The appellants allege the ordinances were the product of an agreement between the council and a downtown developer, Metro Center, Inc., to prevent competition with planned downtown redevelopment. The district court held that

the city and its council were immune from antitrust liability under the state action doctrine; that the council members had absolute legislative immunity from the action brought under section 1983; and that the constitutional claims against the city were legally unsupportable. We affirm.

I.

BACKGROUND

Iowa passed an urban renewal law in 1957, Iowa Code Ann. §§403.1-403.20 (West 1976). The stated policy of that statute is to halt the physical decay of Iowa cities and the accompanying growth of urban social problems. The statute provides that each local government may formulate a workable program for using private and public resources to further urban renewal goals. Every city has the authority to prepare, adopt and revise from time to time a general plan for the physical development of the municipality as a whole. Section 403.6 delegates to every municipality the "powers necessary or convenient to carry out and effectuate the purposes and provisions of the urban renewal law," *id.* at § 403.6, including the power to execute contracts for redevelopment, and to "zone or rezone any part of the public body," *id.* at § 403.12(1).

Sioux City officials and businesses have been increasingly concerned with downtown development since the mid-1960's. In 1964, a committee of downtown businesses and community leaders submitted a plan to the city council evaluating alternatives for maintaining a viable business climate in the city. The city council appointed a Central City Committee to formulate recommendations for orderly development of the central business district. The city applied for funds from the federal government to prepare a General Neighborhood Renewal Plan encompassing 215 acres and to plan a three-block total clearance project known as Central Business District-East (CBD-E). Eventually, the city acquired real estate in the CBD-

E, offered it for redevelopment to private parties, and issued bonds for the construction of parking garages and other improvements. Meanwhile, an eleven-block area adjacent to the CBD-E was also targeted for redevelopment and designated the Central Business District-West (CBD-W). The city applied for federal assistance to survey and plan this area in 1966 but did not receive the funds until 1971. The city thereafter proceeded with active redevelopment of the CBD-W and entered into redevelopment agreements with a private developer, Metro Center, Inc.,[1] in February of 1974.

At the time the city council contracted with Metro Center, its president was Howard Weiner who had been a member of the Sioux City Council from January of 1973 to November 7, 1973. Weiner lost his bid for re-election to the city council and became president of Metro Center three weeks later. Metro Center submitted the sole bid to redevelop three parcels in the CBD-W. Its proposal included plans for a major hotel, department stores, a convention center and related commercial development. Under the redevelopment contract, the city was obligated to obtain federal grants for the CBD-W area, secure real estate, clear the property for redevelopment, and provide streets, sidewalks, street lights and other urban utilities. In return, Metro Center was obligated ot purchase the property from the city, build the commercial facilities it had proposed, procure financing and secure tenants.

The appellants acquired their property along the southern limits of Sioux City in 1962. In 1966, the city annexed the property and apparently zoned it to permit commercial development. In May of 1974, soon after the city entered into the contract with Metro Center, the appellants sold 19 acres of this land to General Growth Properties, a real estate development com-

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[1] Metro Center is a named defendant in this case, but is not a party to this appeal.

pany, for the development of a regional shopping center. The appellants retained approximately 70 acres of adjoining land which they allege they planned to develop commercially to take advantage of business drawn to the regional shopping center. As part of the purchase agreement, the appellants agreed to construct roads to facilitate the area development. When the transaction was complete, the parties publicly announced General Growth's plans to develop a regional shopping center.

The prospect of a regional shopping center competing for commercial tenants with the downtown project concerned Weiner, the president of Metro Center. Weiner states in his deposition that he talked to council members about the importance of limiting commercial development outside the downtown and specifically about the threat posed by General Growth's plan for a regional shopping center. On July 22, 1974, the city council enacted the Interim Development Ordinance which temporarily suspended unplanned development within the city pending the completion of the Plan and Zoning Commission's comprehensive review of the general plan and zoning ordinance. The interim ordinance did not change any zoning classifications, but it restricted the issuance of building permits, approval of site plans in designated areas, and certain types of residential and commercial development.

In November, 1975, appellant Gene Scott requested a "preplat" conference with the planning department and an informal review of the proposed development of his property under the Interim Development Ordinance. The Community Development Director advised the council that the request was in conflict with the provisions and policy of the interim ordinance. On February 17, 1976, the city council granted a conditional variance for preparation of a grading plan only. Scott never applied for a building permit or variance under either the interim ordinance or the permanent ordinance enacted by the city council on August 2, 1976. The permanent ordinance also left appellants' property with a zoning classification that does not allow for the development of a regional shopping center and other retail commercial developments.

The appellants filed their original complaint on January 19, 1979. The complaint alleged violations of the Sherman Act, 15 U.S.C. §§ 1 and 2, and was amended December 3, 1981 to allege a violation of the Civil Rights Act, 42 U.S.C. § 1983. The appellants contended that the city and its council members conspired with Weiner and Metro Center to prevent the appellants from developing their land around General Growth's planned regional shopping center. On December 15, 1982, the district court rejected the defendants' first motion for summary judgment holding that the state action immunity doctrine of *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943), did not shield the municipal defendants and that, in view of this Court's decision in *Westbrough Mall v. City of Cape Girardeau*, 693 F.2d 733 (8th Cir. 1982), *cert. denied*, ____ U.S. ____, 103 S.Ct. 2122, 77 L.Ed.2d 1303 (1983), appellants' civil rights claim presented a question for the jury. On May 3, 1983, the court also denied a renewed motion for summary judgment in which the defendants contended that the Iowa Urban Renewal Law provided state authorization sufficient to trigger state action immunity. The court subsequently reconsidered that denial in light of our then-recent opinion, *Gold Cross Ambulance & Transfer v. City of Kansas City*, 705 F.2d 1005 (8th Cir. 1983), *cert. filed*, 52 U.S.L.W. 3039 (1983), and granted the defendants' summary judgment motion on June 17, 1983. This appeal followed.

II.

ANTITRUST CLAIMS

The initial issue in this case is whether the state action doctrine shields the municipal defendants from liability for violations of the federal antitrust laws.[2]

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[2] The district court granted summary judgment on all claims, apparently including the actions brought under the Iowa Competiton Law. The appellants do not specifically challenge the dismissal of the state claim, rather they contend the district court erred in holding the state action doctrine was applicable here.

A. *State Action Doctrine.*

The Supreme Court established state action immunity from the federal antitrust laws in *Parker v. Brown, supra,* 317 U.S. at 350-351, 63 S.Ct. at 313. It held a California marketing program enacted by the state legislature was exempt from challenge under the Sherman Act because the program "derived its authority from the legislative command of the state." *Id.* at 350, 63 S.Ct. at 313. Because neither the Sherman Act itself not its history suggested an intent to restrain state legislative action, the Court declined to extend the reach of antitrust liability to include such action:

> In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

Id. at 350-351, 63 S.Ct. at 313.

The Supreme Court has since had occasion to address the question of whether, and under what circumstances, state action immunity is available to a state's municipalities.[3] In *City of Lafayette v. Louisiana Power & Light Co.,* 435 U.S. 389, 98 S.Ct. 1123, 55 L.Ed.2d 364 (1978), a plurality of four Justices rejected the claim that the state action doctrine extends to "all governmental entities, whether state agencies or subdivisions of the state***simply by reason of their status as such." *Id.* at 408, 98 S.Ct. at 1134. The Court emphasized that cities have not historically been treated as the equivalent of states and that serious economic dislocation could result if cities were free to

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[3] Other Supreme Court decisions have further refined the *Parker* state action doctrine. *E.g., Bates v. State Bar of Arizona,* 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977); *Cantor v. Detroit Edison Co.,* 428 U.S. 579, 96 S.Ct. 3110, 49 L.Ed.2d 1141 (1976); *Goldfarb v. Virginia State Bar,* 421 U.S. 773, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975).

place their own parochial interests above the national economic goals reflected in the antitrust laws. *Id.* at 412-413, 98 S.Ct. at 1136. The Justices nonetheless acknowledged that a state may choose to effectuate its policies through the instrumentality of its municipalities. Thus, the *Parker* doctrine would exempt from the ambit of antitrust liability municipal anticompetitive conduct engaged in "pursuant to state policy to displace competition with regulation or monoply service." *Id.* The state policy relied on would have to be "clearly articulated and affirmatively expressed." *Id.* at 410, 98 S.Ct. at 1135. This does not mean the municipality must be able to point to a specific, detailed legislative authorization; rather, an adequate state mandate exists when the authority given to the municipality to operate in a certain area indicates "that the legislature contemplated the kind of action complained of." *Id.* at 415, 98 S.Ct. at 1138.[4]

In *Community Communications Co. v. City of Boulder,* 455 U.S. 40, 102 S.Ct. 835, 70 L.Ed.2d 810 (1982), the Court held that a state's general grant of extensive powers of self-government or "home rule," to its municipalities does not provide specific enough state authorization to trigger state action immunity. Boulder had passed an ordinance prohibiting a cable television company from expanding its business in the city. Boulder claimed state action immunity because of its status as a home rule municipality. The Supreme Court disagreed, stating "the requirement of 'clear articulation, and affirmative expression' is not satisfied when the state's position is one of mere *neutrality* respecting the municipal actions complained of as anticompetitive." *Id.* at 55, 102 S.Ct. at 843 (emphasis in original). A legislature cannot be said to have contemplated specific conduct if it allows a municipality to do what it pleases. *See id.*

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[4] This standard has since been adopted by a majority of the Court. *Community Communications Co. v. City of Boulder,* 455 U.S. 40, 50-51, 102 S.Ct. 835, 840-41, 70 L.Ed.2d 810 (1982).

This Circuit has had the opportunity to address the state authorization aspect of state action immunity in cases where a specific state statute engendered the challenged city actions. In *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1015, we held that Missouri's comprehensive statutory scheme regulating ambulance service in the state authorized the single-operator ambulance system adopted by Kansas City. In *Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency,* 715 F.2d 419 (8th Cir.), *cert. filed,* 52 U.S.L.W. 3441 (1983), a private solid waste disposal facility challenged a city agency's requirement that all solid waste generated in its jurisdiction be disposed of at its own facilities. We held state authorization for such activity could be implied from an Iowa statute which encouraged the construction of sanitary landfills by local governments and contemplated that revenue bonds would finance joint undertakings by cities and counties to provide common disposal facilities. *Id.* at 425-427.

These cases analyzed the state action immunity issue in two steps: First, the state legislature must have authorized the challenged municipal activity. Second, the legislature must have intended to displace competition. *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1101; *Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency, supra,* 715 F.2d at 425. *See also,* Areeda, Antitrust Law ¶212.3a at 53 (Supp. 1982). Reasoning from the language in *City of Lafayette v. Louisiana Power & Light Co., supra,* 435 U.S. at 415, 98 S.Ct. at 1138, which states that the necessary legislative intent exists where "the legislature contemplated the kind of action complained of," we held the state policy to displace competition can be inferred "if the challenged restraint is a necessary and reasonable consequence of engaging in the authorized activity." *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1013; *see Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste*

Agency, supra, 715 F.2d at 427; Areeda, *Antitrust Imminity for "State Action" After Lafayette,* 95 Harv.L.Rev. 435, 446 (1981).

B. *The State's Authorization.*

To determine whether the state authorized the acts complained of we must first determine what those acts are. The appellants specifically challenge the council's passage of the ordinances which prevented them from commercially developing their land. They also challenged the council's dealings with Metro Center prior to the passage of the ordinances. Thus, the first question is wheter the Iowa Urban Renewal Law authorized both zoning in furtherance of urban renewal goals and the relationship between the city and Metro Center complained of here.

The Iowa Urban Renewal Law gives both general and specific authorization for a municipality's use of zoning power to further the policy of urban renewal. Two extremely broad grants of power are contained in the stature. Section 403.6 begins with the statement that "[e]very municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter." Iowa Code Ann. § 403.6 (West 1976). Section 403.12 echoes this broad authorization giving local public bodies the powers to do "any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal project." *Id.* § 403.12(1)(c).[5] The specific powers granted to municipalities for urban renewal include the power to zone or rezone any part of the municipality or public body. *Id.* §§ 403.6(8) & 403.12(1)(h).

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[5] Section 403.6 enumerates the powers delegated to municipalities. Iowa Code Ann. § 403.6 (West 1976). Section 403.12 enumerates the powers granted to public bodies, *id.* § 403.12, which includes political subdivisions of the state, *id.* § 403.17(3). Thus, the powers included in both sections are delegated to the state's municipalities, although section 403.6 specifically addresses municipalities.

The appellants argue the city's power to zone to further its urban renewal plan is limited to those areas that have been designated for redevelopment. The breadth of the grant of power contained in these provisions, together with the language authorizing zoning or rezoning of any part of the municipality or public body, belies any such limitation in the state's authorization. Thus, the urban renewal law clearly authorized Sioux City to zone outlying areas of the city to protect urban renewal goals.

Iowa's urban renewal law also authorizes municipalities to contract with private developers for the commercial redevelopment of a designated urban renewal area. The municipality may acquire real estate in a designated area. *Id.* §§ 403.6(3) & 403.7. That property may then be sold, leased or otherwise transferred to private companies to be developed for, among other things, commercial uses. *Id.* § 403.8(1). The private purchasers are obligated to devote the property to uses specified in the overall urban renewal plan and other public interest requirements determined by the municipality. *Id.* The municipality furnishes roads, public utilities, and other public improvements for the urban renewal project. *Id.* § 403.6(2). Thus, Iowa law authorized the contract between the Sioux City Council and Metro Center and also, presumably, their preliminary dealings together as contracting parties.

The more difficult question is whether the Iowa Legislature intended to sanction the specific zoning ordinances complained of here. The district court, following our opinion in *Gold Cross Ambulance,* held that because Sioux City's zoning was a necessary and reasonable consequence of engaging in the authorized urban renewal activity, the intent element was satisfied. The court found the city's ordinances were necessary to protect its investment in its downtown development. The court further found that the ordinances were not an unreasonable consequence of the state's goal of promoting urban redevelopment combined with the broad authority vested in the municipalities to accomplish this goal.

We agree with the district court that the importance the Iowa Legislature placed on urban renewal, and the broad powers it gave to municipalities to address the problem, support a finding that the legislature contemplated the type of zoning ordinances passed by Sioux City. The Iowa Legislature considered the decay of its urban areas a serious threat to the economic, social and physical welfare of state residents. It noted that the existence of slum and blighted areas contributes to the spread of disease and crime, reduces tax revenues, impairs the growth of municipalities and retards the provision of housing accommodations.[6] *Id.* § 403.2(1). To combat this "growing menace," the legislature empowered municipalities not only to zone, inspect, and regulate private real estate, but to do all things

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[6] Iowa Code Ann. § 403.2 (West 1976) provides in pertinent part:

> 1. It is hereby found and declared that there exists in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern * * *

necessary to assure the success of their urban renewal projects.[7] The legislature's deep concern and broad delegation of power contributes to our finding that it contemplated the challenged zoning.

A more compelling reason to find the necessary legislative intent, however, is that the legislature has put municipalities in the position of partially financing commercial development. The Iowa Urban Renewal Law allows cities to raise a substantial amount of money for their urban renewal ventures through federal and local government loans, tax levies and the issuance of bonds. *Id.* §§ 403.6(5), 403.6(8) & 403.9. The district court found Sioux City had raised approximately $30 million in public financing to support its urban renewal project.

We can assume that the state legislature appreciated the harsh economic realities faced by the city that undertakes such a project. In *Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency, supra,* 715 F.2d at 427, this Court held the Iowa Legislature contemplated a monopoly by a metropolitan solid waste facility when it authorized the fiancing of such facilities by revenue bonds. "When ascertaining what was in the minds of the legislators, we cannot ignore the realities of the municipal bond market in the mid 1970's. The legislature surely

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[7] In addition to the general grant of all powers "necessary or convenient to carry out and effectuate the purposes and provisions of this chapter," section 403.6 specifically empowers municipalities, among other things, to carry out urban renewal projects; to make and execute contracts; to disseminate slum clearance information; to contract for the repair and furnishing of all services and facilities for or in connection with an urban renewal project; to acquire any real or personal property for administrative purposes and to hold, improve, clear or prepare such property for development; to encumber or dispose of any real property; to invest urban renewal project funds; to obtain money from the federal, state or county government; to make all necessary surveys and planning; to plan for the relocation of people and businesses; to appropriate funds; to levy taxes; to zone and rezone any part of the municipality; to sell and convey real property. Iowa Code Ann. § 403.6 (West 1976).

realized the importance of assuring a source of repayment in order to make the bonds marketable." *Id.*

Similarly, here, the state legislature must have anticipated that once a municipality became financially and legally committed to commercial development in urban areas, it would use its delegated powers, including the power to zone and rezone, to protect that commitment. Consultants to the Sioux City Council advised discouraging shopping centers in favor of the downtown because dispersing major retailing facilities among several locations in a market of Sioux City's scale would reduce the chances of success for the downtown project.[8] The challenged ordinances were thus a reasonable and necessary consequence of the city's role in implementing state urban renewal goals.

In sum, we hold the Sioux City ordinances meet both prongs of the state action immunity test as stated in *Gold Cross Ambulance:* First, the Iowa Legislature, in both general and specific provisions of the Iowa Urban Renewal law, authorized the challenged activities—zoning to protect urban renewal goals and the relationship between the city and Metro Center. Second, the legislature contemplated that municipalities might enact the type of ordinances enacted by Sioux City. We base this latter conclusion on the belief that the city's zoning action is the necessary and reasonable consequence of allowing municipalities to join in downtown redevelopment projects with private commercial developers and invest substantial sums of public money in such projects.

The district court also properly concluded that the state action doctrine did not require the state to actively supervise the challenged restraint. The Supreme Court has required active state supervision in those cases where it has extended state ac-

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[8] *Scott v. City of Sioux City,* C79-4009, slip op. at 11 (W.D.Iowa April 4, 1983) (order for final pretrial conference).

tion immunity to private entities or individuals. *See, e.g., California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97, 99, 100 S.Ct. 937, 940, 63 L.Ed.2d 233 (1980); *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 582, 96 S.Ct. 3110, 3113, 49 L.Ed.2d 1141 (1976). In *Gold Cross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1014, we held, however, that the state supervision requirement is not applicable to municipal officials. Unlike private parties, municipal officials are accountable for their decisions to the citizens they represent. State supervision is therefore less necessary to prevent abuse of power. Moreover, while the state authorization requirement for municipal decisions tests whether the challenged local activity is truly state action, the state supervision requirement serves that function for private conduct. *Id.*

The appellants argue that, after *Gold Cross Ambulance,* state supervision is still applicable when a municipality is engaged in conduct outside the scope of traditional governmental functions. We need not reach this issue because we agree with the district court that zoning for urban renewal purposes is a traditional governmental function designed to protect public health and safety. The mere investment of public funds does not make a project proprietary rather than governmental. *See Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste Agency, supra,* 715 F.2d at 428. We thus conclude active state supervision of Sioux City's urban renewal projects and attendant zoning decisions was not necessary to shield Sioux City and its officials from antitrust liability in this case.

C. *Acts Outside the State's Authorization.*

Our holding that the Iowa Urban Renewal Law provides a clear and affirmative expression of a state policy favoring Sioux City's action does not end our inquiry. The appellants assert the city council acted outside the state authorization and thus its actions cannot be shielded from antitrust liability. They allege

that the city's zoning decision was the product of an anticompetitive "conspiracy" between the city and Metro Center rather than urban renewal policy. They further allege that because the city council did not follow the procedures outlined in the urban renewal statute for amending the plan when it passed the challenged ordinances, it forfeited state authorization.

A city council could conceivably violate the antitrust laws by entering into an agreement with a private developer to restrain trade. *See Westborough Mall v. City of Cape Girardeau, supra,* 693 F.2d at 746; *Mason City Center Association v. City of Mason City,* 671 F.1d 1146, 1149 (8th Cir. 1982); *Whitworth v. Perkins,* 559 F.2d 378, 381 (5th Cir.1977), *vacated on other grounds,* 435 U.S. 992, 98 S.Ct. 1642, 56 L.Ed.2d 81 (1978); Areeda, Antitrust Law, *supra,* ¶ 203.3 at 12-13. In this case, however, the appellants have alleged no actions which appear outside the ambit of the city's antitrust immunity.

As previously stated, the city is immune from antitrust liability for passage of the interim and permanent ordinances. The appellants nonetheless intimate that the city should be subject to antitrust liability because Metro Center urged the council members to pass the ordinances.[9] We reject this contention. Antitrust immunity is meaningless in this context unless it extends to the council's proper dealings with Metro Center prior to the council's official zoning action. The Iowa Urban Renewal Law authorized Sioux City's joint endeavor with Metro Center to redevelop the city's decaying commercial district. Metro Center thus had legitimate reason to discuss with council members the effect a regional shopping center would

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[9] Because we find state action immunity shields the defendants in this case, we need not discuss possible immunity under the *Noerr-Pennington* doctrine. *See United Mine Workers v. Pennington,* 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965); *Eastern Railroad Presidents v. Noerr Motor Freight, Inc.,* 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961).

have on their joint project. Since the state has authorized both the business relationship between the city and Metro Center's proper dealings with the council fall within the ambit of antitrust immunity.

The appellants point to the relationship between the president of Metro Center, Howard Weiner, and some of the city council members as proof of an anticompetitive agreement. Weiner was on the city council just prior to becoming president of Metro Center. Metro Center submitted the sole bid to redevelop CBD-W while Weiner was on the council. Weiner states in his deposition that he had close personal friendships with at least five of Sioux City's council members. He talked to these and other members of the council about General Growth's plans for a regional shopping cneter and urged the council to take preemptive action. Based on his deposition, there is no doubt Weiner used his best efforts to get the council to pass the ordinances favoring the downtown project.

Without the broad grant of immunity in this case, Weiner's activities may have preserved the conspiracy question for the jury. In *Westborough Mall v. City of Cape Girardeau, supra,* 693 F.2d at 746, we stated that "a conspiracy to thwart normal zoning procedures and to directly injure the plaintiffs by illegally depriving them of their property is not in furtherance of any clearly articulated state policy." In that case, however, we did not have specific legislative authorization of the acts complained of and the requisite legilative intent. We do not think Sioux City should be deprived of immunity simply because Weiner knew some of the council members and perhaps talked to them personally about factors important to the success of the downtown project. The purpose of state action immunity is to allow states and municipalities with state authorization to pursue health and welfare goals without threat of antitrust liability. That purpose would be frustrated in this case if the mere label "conspiracy" were enough to warrant an antitrust trial. The appellants do not allege that the council members were involved in

bribery or other illegal acts. We thus conclude the appellants' allegations do not remove the municipal defendants from the ambit of antitrust immunity.

Neither do we find the appellants' allegation that the city departed from the state mandated procedures in passing the challenged ordinances adequate grounds for stripping the city of immunity. The city's departure from state procedureal requisites would have to be extreme to warrant the threat of antitrust liability. State authorization for antitrust purposes does not require administrative decisions that are free from ordinary errors. As a commentator recently noted:

> The *Lafayette* authorization requirement should not be manipulated in such a way as to thwart the fundamental *Parker* policy against antitrust scrutiny of state action. The antitrust court should require no more than that the result of the agency's act or decision was of the sort contemplated by state anticompetitive policy. "Ordinary" errors or abuses in the administration of jurisdiction conferred by the state should be left for state tribunals to review.

Areeda, Antitrust Law, *supra*, ¶ 212.3b at 57.

Here, the appellants apparently allege the city did not amend its general urban renewal plan before enacting the ordinances. We do not view this error to be of a magnitude that necessitates abrogating the city's antitrust immunity.

In sum, we do not believe a material issue of fact exists as to whether the city acted outside the state's authorization for antitrust purposes either in its dealings with Metro Center prior to passing the challenged ordinances or in the procedures followed to enact them. We therefore affirm the district court's grant of summary judgment to the municipal defendants on appellants' antitrust claims.

III.

CONSTITUTIONAL CLAIMS

The district court also granted the municipal defendants summary judgment on the appellants' constitutional causes of action brought under 42 U.S.C. § 1983. The appellants' broadly worded complaint alleges that the city's zoning action deprived them of equal protection, substantive due process, procedural due process, and constituted a taking without just compensation. The district court rejected the appellants' constitutional claims and also held that the city council members had absolute legislative immunity. Because we agree that the appellants' constitutional claims are meritless, we affirm on that basis and do not address the legislative immunity issue.

The appellants claim they were denied substantive due process because the city's ordinances denied them the right to use their property in accordance with the zoning classification in effect when they made their initial plans to commercially develop the property. We agree with the district court that the ordinances do not infringe on any fundamental rights.[10] Thus, the ordinances survive a substantive due process challenge if they were designed to accomplish an objective within the government's police power, and if a rational relationship existed between the provisions and purpose of the ordinances. *Gold Gross Ambulance & Transfer v. City of Kansas City, supra,* 705 F.2d at 1015. A finding that the ordinances had a rational basis also defeats the appellants' equal protection claim.

As explained in the antitrust section of this opinion, the city designed the interim and permanent ordinances to further its urban renewal goals. The state's urban renewal law clearly placed

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[10] The appellants contend the ordinances infringed on their fundamental right to receive just compensation for a taking. We think that the appellants' taking claim should stand or fall on its own merit, rather than serve as a back door for other constitutional challenges.

this objective within the city's power. Moreover, the ordinances were rationally related to the goal of urban renewal. The city had already made a substantial investment in revitalizing its downtown commercial district. It had good reason to believe the investment would fail if competing regional shopping centers siphoned off the market. Because the city had a rational basis for passing the challenged ordinances, we hold summary judgment was proper on the appellants' substantive due process and equal protection claims.[11]

The appellants' procedural due process claim must also fail. To sustain a procedural due process claim, the appellants must first establish that they possessed "a legitimate claim of entitlement" to the zoning and building permits which would allow commercial development of their land. *Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed2d 548 (1972). This entitlement could be based upon state or local law or upon an express contract or mutual understanding with the defendants. *See id.* at 577-578, 92 S.Ct. at 2709; *Perry v. Sindermann,* 408 U.S. 593, 600-603, 92 S.Ct. 2694, 2699-700, 33 L.Ed.2d 570 (1972); *Brockell v. Norton,* 688 F.2d 588, 590-591 (8th Cir. 1982). For example, under Iowa vested rights law, the appellants might have acquired a property right in the use of their commercial zoning if they made legitimate and valuable expenditures before passage of the ordinance on the assumption the land would retain its commercial zoning. *See Nemmers v. City of Dubuque,* 716 F.2d 1194, 1197-1198 (8th Cir.1983).[12]

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[11] The appellants question whether the city's proffered rationale is the real reason the city passed the ordinance. As long as a rational basis exists, however, it need not be the real reason for the governmental action to satisfy substantive due process. *See, e.g., Williamson v. Lee Optical Co.,* 348 U.S. 483, 490, 75 S.Ct. 451, 465, 99 L.Ed. 563 (1955).

[12] The appellants have belatedly asserted the vested rights theory to this Court as a separate cause of action. This theory is a matter of state law not actionable under 42 U.S.C. § 1983. *See Nemmers v. City of Dubuque,* 716 F.2d 1194, 1197 (8th Cir.1983).

Application for a building permit at a time when commercial development was permissible under the applicable ordinances might also have created a claim of entitlement sufficient to trigger due process guaranties. *See Scott v. Greenville County,* 716 F.2d 1409, 1418 (4th Cir.1982) (applying South Carolina law). Here, however, appellants do not allege they had applied for any building permits or made any appreciable expenditures before the interim ordianance was passed.[13] Without a legitimate claim of entitlement, the appellants' procedural due process claim fails.[14]

Similarly, the appellants' taking claim is without merit. The city's action did not confiscate the appellants' property, it merely diminished the land's value. Diminution in value, standing alone, does not establish a "taking." *See, e.g., Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 131, 98 S.Ct. 2646, 2662, 57 L.Ed.2d 631 (1978); *Euclid v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926). Appellants allege no facts which would take their claims outside this general rule.

In sum, we affirm the district court's grant of summary judgment on the appellants' section 1983 claims.

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[13] The appellants do not allege in either their complaint or their amended complaint that they spent any money preparing their land for commercial development. Scott's deposition contains some reference to expenditures made to prepare a plat, but that was after the passage of the interim ordinance. Although the district court found these expenditures were significant enough to confer standing, *see Scott v. City of Sioux City,* No. C79-4009 slip op. at 4 (N.D.Iowa Dec. 17, 1982) (unpublished order), they are not sufficient to create a vested right under Iowa law. *See Nemmers v. City of Dubuque, supra,* 716 F.2d at 1197-1198.

[14] At oral argument the appellants' attorney asserted that the city had promised the appellants commercial zoning when the land in question was annexed to the city. The existence of such an agreement was not alleged before the district court, and we decline to consider it here.

IV.

CONCLUSION

We agree with the district court that under this Circuit's precedents, Sioux City is shielded from antitrust liability. The state legislature authorized municipalities to invest public money in joint ventures with private developers to renew decaying urban areas. The legislature delegated to the municipalities general and specific powers to do all things necessary, including zoning and rezoning all parts of the municipality, to assist and protect these urban renewal projects. In our view, Sioux City's ordinances protecting the downtown commercial district are a reasonable and necessary consequence of the state's authorization. Furthermore, because the Iowa Urban Renewal Law also authorized the council's dealings with Metro Center prior to passage of the ordinance, they are also accorded antitrust immunity. Finally, we also affirm the district court's grant of summary judgment on the appellants' section 1983 action.